

HINDU CODE BILL

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DISCUSSION ON THE HINDU CODE AFTER RETURN OF THE BILL FROM
THE SELECT COMMITTEE (11TH FEBRUARY 1949 TO 14TH
DECEMBER 1950)

SECTION III A

Much has been said on this subject, therefore, I do not want to labour this point. I feel that the opposition is more due to their love for this ancient institution, but those who oppose it I think oppose it because they forget the fact that Hindu Law and *Dharma* on these matters remain static and no changes have been made. Various judicial decisions have made changes from time to time into this system and the institution has been simply shorn of its characteristics. This point has been very ably answered by a very great lawyer like S. Srinivasa Ayyangar, who said that under the Hindu Law, as authoritatively interpreted by the Privy council, the unity is broken by any member at any time by a unilateral declaration of his intention to separate from the family. This is quite sufficient to answer that charge against the breaking of the co-parcenary or the replacement of the *Mitakshara* by *Dayabhaga*.

I do not want to take more time of the House. Many things have happened since the achievement of freedom and India has been participating in international conferences and pleading for human rights and also for equal treatment of Indians in foreign countries. It will be a great misfortune if at this juncture we fail to enact a Hindu Code within our own borders, in which there will be no discrimination and where there will be equality for men and women to move, to develop and to contribute to the re-building of our India. Our constitution is in the making, we have already passed the Chapter on fundamental rights, and recognised the principle of equality of everyone before law. We have also passed the provision enabling ourselves to have a uniform civil code. Therefore, I make this appeal to you. Let us not be wanting or halting in having a Code of Hindu Law for ourselves which will prove a great boon to our own society in the way in which I have already staled.

Pandit Lakshmi Kanta Maitra (West Bengal : General) : Sir, I am thankful to you for giving me this opportunity to put in a few words what I feel regarding the motion before the House, namely the consideration of the Hindu code. I know I am in a position of great disadvantage inasmuch as I could not be present when the Motion was debated during the first two days, as I had to

be away from this place. I had, in the few moments I could snatch in the midst of my preoccupations, noticed Press reports that my honourable friend the Law Minister, Dr. Ambedkar had made a magnificent speech in support of his motion. Also, that an equally powerful speech—I am not making any comparison. I rely on reports, though there is a divergence of opinion even among the reporters that an equally powerful speech was made on the other side by Pandit Thakur Das Bhargava.

I listened with considerable attention to the four speeches that have been made in favour of the motion and the one against it. As the debate was going on yesterday, I could see the mood of the Houses— sometimes hilarious, but when a Member sought to differ from the main provisions of the bill, all manner of gibes and ironical cheers greeted him all through. (*Honourable Members* : ' No, no ') I am glad it is not so. Well, I think it will give me some encouragement because most members know—I think every single member knows—which way I will speak. I do not know how I came to attain this sort of notoriety—I could not say, fame—that I do not support the provisions of this Bill. I will make no secret of it, (*An Honourable Member*: Why should you?) because I will speak out my convictions. I know what a delicate task it is for me to be addressing this House, constituted as it is and in the mood in which I find it. I know that I may have to rue the temerity which I have shown by taking courage in both hands to say what I feel. It is rather helpful that immediately before I address this House. I have had the opportunity of listening to my honourable sister, Shrimati Durgabai, who has made a closely reasoned speech in support of this Bill.

I must apologise to my sister for not being able to agree with her in the theories which she has so confidently assumed as being almost accepted by all. She finished her speech with a peroration, appealing to the House to give effect to the principle in the Draft constitution providing for equality for all in the eye of the law. Yes, we have done that. She also reminded us that we have already passed, as one of the Directive Principles of the Constitution that there should be a uniform Civil Code for the whole of this country. I am glad she gave me the starting point of my speech today. When this subject was debated a couple of months ago in another place and when it was thrashed out elsewhere informally, I registered a vehement protest against this provision, as I felt, that it was nothing but an outcome of shibboleths and slogans—a uniform Civil Code for a country inhabited by 32 to 34 crores of people professing all manner of faiths : Hinduism, Sikhism, Jainism, Buddhism, Christianity ; and last but not the least, Islam! I tabled amendments that the personal law should be secure and that this was an encroachment by the State on the personal law of a person which the State

had no right to make.

Maulana Hasrat Mohani (U. P. : Muslim): Hear, hear.

Shrimati Renuka Ray (West Bengal: General): That is the reason why you should support this Hindu Code.

Pandit Lakshmi Kanta Maitra : The honourable sister in front of me says that it is the reason why I should support the Hindu Code. May I say that that is the very reason why I am going to oppose the Hindu Code—one of the main reasons. You must be logical. I can understand the feelings of my sisters. Do not think that I am a hater of women, that I am a misogynist, or that I have no feeling for women. (*An Honourable Member:* ' He is a married man ') Yes I am a married man. I have a humble wife—married according to Hindu shastric rites,—a simple, unsophisticated lady, bred up and nurtured in the ideals of our Hindu homes. (*The Honourable Dr. D. R. Ambedkar :* ' What a pity ') It is a pity ! May be, but I have not much of love or liken for the lavender, lipstick and vanity bag—variety of that sex. I am happy, and I am sure out of every hundred Hindu homes, 98 have got these types of wives and are quite happy. (*An Honourable Member :* ' Why 98? 99.9 percent are so ') I am glad, a friend says it is 99.9 percent recurring. That enforces my argument. So I can tell my honourable friend Dr. Ambedkar that I have not felt the necessity for the drastic changes that he has sought to introduce in this Bill. (*The Honourable Dr. D. R. Ambedkar:* ' Neither did I feel any) My honourable friend says he also did not feel the necessity. If he did not really feel any necessity for these sweeping changes, then do I take it that it was due to his megalomania that we have got this Hindu Code Bill ? I have very great admiration for my honourable friend Dr. Ambedkar, with whom I had the privilege to work for a number of years before this Assembly. I respect him. I know the performance he has been daily putting in connection with the Constitution Act, (*Honourable Members:* ' Hear, hear ') I appreciate him. I admire him. But I will never appreciate what he has been doing in connection with this Social Legislation which is sure to disrupt the Hindu society by the revolutionary changes which very few of us can now realise. (*Honourable Members:* ' No revolution. No, no ') Yes, I am glad it is "No no. ' If this Bill is passed into law.....

Babu Ramnarayan Singh (Bihar: General): No.

Pandit Lakshmi Kanta Maitra : What no ' ?

Babu Ramnarayan Singh: It would not be passed into law.

Pandit Lakshmi Kanta Maitra: I see. If this Bill is passed into law as it is I will then see who is a better prophet—myself or those who say " No, no. "

Shri L. Krishnaswami Bharathi (Madras : General) : You wait and see.

Pandit Lakshmi Kanta Maitra : Well, wait and see. Posterity will judge, and

I do not think you will have to wait till posterity. You will have to wait only till the next General Election to see what the country has to say about you and your work.

Maulana Hasrat Muhani: Hear, hear. Well done.

Pandit Lakshmi Kanta Maitra : Sir, the First point raised by my sister Shrimati Durgabai was that having passed that Directive principle, you should not now object to the Hindu Code. When that Directive Principle was accepted by the House. I thought that the snake had been killed—the Hindu Code Bill,—but I now see that the snake was only scotched ; it has reared its head again and will in time spread out its fangs of venom. If you are true to your Directive Principles, if you mean to act on them, then why bring the Hindu Code Bill. Bring a Universal Civil Code applicable to Hindus, to Christians, (*Shri L. Krishnaswami Bharati : ' Will you support it ? '*) to Parsis, to Sikhs, to Jains, to Buddhists, to Muslims. You dare not touch the Muslims but you know that Hindu society today is in such a bad way that you can venture to do anything with it. Only a few ultra-modern persons, who are vocal, but have no real support in the country, are interested in this Bill. (*Interruption*).

Mr. Deputy Speaker: Let him proceed.

Pandit Lakshmi Kanta Maitra : Millions of dumb people, ignorant but not the less intelligent or sensible simply because they do not have the collegiate education, or are not members of the legislatures think that such a radical change in their personal law is not called for. They are not to be ignored.

Shrimati Renuka Ray: Then do not draw up the Constitution.

Pandit Lakshmi Kanta Maitra : I therefore feel that there is no sincerity in the acceptance of the principles of one uniform Civil Code for the whole country; or else, how could you, within two months of it, come out with this Hindu Code Bill which seeks to govern only the Hindus, Sikhs, Jains and Buddhists ?

Shrimati Renuka Ray: Hindu Code came much before.

Pandit Lakshmi Kanta Maitra: You have omitted Christians, Muslims, Parsis.

Maulana Hasarat Mohani: Muslims will never accept any interference in their personal law.

Pandit Lakshmi Kanta Maitra : You need not have reminded me. I know that. I perfectly appreciate the proposition of my honourable friend Maulana Hasrat Mohani. But all the same. I think this is a fundamental departure from the accepted principles in the Constitution.

When my honourable friend Shrimati Durgabai said that codification is justified. She tried to prove that an irresistible case had been made out for

codification. With all respect to my sister Shrimati Durgabai I submit I stand unconvinced. I can understand the necessity for codification when the law is in a state of flux or that there is much diversity of opinion, or a good deal of vagueness or uncertainty about it. Codification should in such a case be undertaken by the best legal brains in the country silting together to give shape to the various principles of law which are more or less in a confusing or uncertain state. Is that the case with regard to Hindu law in this country ?

Shri Krishna Chandra Sharma (U. P. : General): It is.

Pandit Lakshmi Kanta Maitra : I accept your statement but I feel deep regret for the colossal ignorance you have exhibited. Hindu law, if my honourable friend is a lawyer and holds that view, he has not practised. He will please excuse this friendly retort. I can stand interruptions. If you interrupt me you will be only adding ginger to my speech. After the advent of the British to this country, the Hindu law got gradually crystallised. They did not dare to touch the personal law of the people of the country.

Babu Ramnarayan Singh: They brought in limited estate for women.

Pandit Lakshmi Kanta Maitra : I am coming to that straightaway. If I forget to reply to that point, kindly remind me. Hindu Law is such a vast subject that I can talk for hours on it, if the Chair permits me to do so. I assure you. Sir, I am not going to do that.

I protest in the First place against the manner in which this Bill has been sought to be smuggled into this House and through this House. It is an extraordinary procedure, Mr. Deputy Speaker.

Shrimati Renuka Ray : I object, Mr. Deputy-Speaker, to this insult to the House.

Pandit Lakshmi Kanta Maitra: It is not a point of order.

Shrimati Renuka Ray : This is a point of order. Sir. I object to the remarks made against the house.

Pandit Lakshmi Kanta Maitra: ' Smuggling " I have never understood to be an unparliamentary word. if the honourable member thinks that there is any stigma attaching to it. I would use another word in substitution thereof. I would say that the haste with this Bill sought to be passed in the House is extraordinary. Is that also an unparliamentary word ? If so, give a parliamentary expression for that. You cannot find a substitute for it. (*An Honourable Member* : ' Commendable speed '). It is a most extraordinary procedure that has been adopted in this House. I have some little experience of parliamentary activity in this House. I have never known an occasion when a Bill of this importance and magnitude has been sought to be passed in the way it is done now.

Shri Brajeshwar Prasad (Bihar: General) : It will never be passed.

(Interruption).

Pandit Lakshmi Kanta Maitra: I like interruptions but I could not catch what he said. If the honourable-members think that by constantly interrupting me in this way the effectiveness of my speech will be marred they are mistaken.

The Bill was introduced on the last day of the last Budget session.

Babu Ramnarayan Singh : Last hour.

Pandit Lakshmi Kanta Maitra ; You know very well how a Bill of this importance and magnitude, a Bill which seeks to regulate the life and conduct of Hindu society was introduced on the last day of the last session ; how at the end of the day's work we sat beyond 5 o'clock for two hours and the honourable the Minister for Law was allowed to make a speech committing it to a Select Committee, only three or four speakers, under a rigid time limit were allowed to speak and at 7 O'clock after a short session the motion was carried. Thereafter what happened ? It went to the Select Committee. The Select Committee reported on it and on the motion for consideration of that report points of order were raised in this House. I am not going to enter into the merits of those vital points of order. They were disposed of. So great was the impatience that in the last session the honourable the Law Minister wanted to simply say that the Bill be taken into consideration and there was no speech. It was somehow got into the agenda. Very well it was done. Points of order were ruled out and it was found that it was within the competence of the House to go on with the measure as reported by the Select Committee. Now look at the way in which it is being dealt with now. In the short indulgence between the Railway Budget and the General Budget this is sought to be pushed through. There is no seriousness about it. Nobody feels its importance. The country at large is bewildered by the way in which we are dealing with a piece of legislation of this far reaching importance. If you attach real importance to it, if you really mean business, if you want that something should be done by way of revising the Hindu law as it is today, this is certainly not the way to do it. Keep the Bill for a special session. For small Banking Bills and the like you are devoting days and days. That being the case, do you mean to say that a Bill which seeks to regulate the life and conduct of the Hindu community should be dealt with in the haphazard way in which it is sought to be done ? I enter my emphatic protest against the way in which this important legislation is being considered. You know how at 3 o'clock yesterday there was the Supplementary Demand for Railways and later in the day the General Budget came in. I wish to submit, Mr. Deputy Speaker that I have not been accustomed to this kind of procedure with regard to Bills of this nature. I ask the old Members of the Legislature to recall a single precedent for this.

Babu Rarnnarayan Singh : There is none.

Pandit Lakshmi Kanta Maitra : Sir, the question is, is there any real necessity for codification. I see absolutely none, because, as my learned friend Shrimati Dorgabai said, the Hindu law is well settled and it has held the field for about hundred years. The ancient Hindu law, when the britishers came here, was interpreted with the help of Indian Pandits. They used to call them Judge Pandits who ransacked all the *Smrities* and *Dharma Shastras* and interpreted the law. This process continued till they succeeded in evolving from the rest mass of *Smrities* and *Nibhandhanas* and usages, a system of judicial principles constituting the Hindu Law which now hold the field.

Sir, it is well known that the Hindu Law has the oldest pedigree of all the known systems of jurisprudence in the world.

Dr. Mono Mohan Das (West Bengal: General): It is unjust.

Pundit Lakshmi Kanta Maitra: Yes, the Hindu law is unjust ! Hindu society is unjust! Hindus are unjust It is not possible for anybody to reply to an interruption that the Hindu law is unjust. It took only three words to compose that interruption. I do not know if I have the capacity to reply to a sweeping charge like that made in three words ' It is unjust ', Whether a system is good or bad, it is for the society to judge ; it is not for disappointed or disgruntled persons to judge. But I may say that the one surest proof of its soundness is that it has been able to stand the test of centuries. No system which is intrinsically bad, unsound or unjust can endure for a long time. Hindu law and the Hindu social system governed by it have been able to withstand the shocks and revolutions which have swept over the country during the ages past. Historic cataclysms have swept off the foot of ancient civilisation of countries like Greece, Rome, Assyria, Babylonia—which have all crumbled down—whereas Hindu culture or community, which cannot date its origin, still continues to function with all the vigour and vitality, and I am sure. Providence will allow it to function, till we set about to undermine its very foundations, by legislating in these reckless and light-hearted ways. If there was anything essentially weak in the foundations of Hinduism it would not have been able to survive the upheavals that overwhelmed it throughout its long and chequered history. This country has been subjected to foreign rule for over a thousand years. History will tell you how she has shown her wonderful adaptability, reflection will reveal to you that the Hindu law has had in it the germs of flexibility and adaptability which have enabled it to adjust itself at all times to the changing needs and to meet the challenges of the limes.

Shrimati G. Durgabai : Hear, hear.

Shrimati Renuka Ray: There is a change now. (*Interruption*).

Pandit Lakshmi Kanta Maitra: I am glad that I get a spate of interruption, which gives me breathing time. Please do that singly. Mr. Deputy Speaker, I am not so big a fool as to hope that many will be convinced by what I say, but I do hope that someone of us at least, may give some little thought to what I say. I earnestly plead that Hinduism, the Hindu Law; the Hindu culture have got immemorial traditions, age-long-moorings, which it would not perhaps be wise for us to sweep away by one stroke of the pen. I make this appeal to my friends to the right and to the left. Sir, I am apprehensive this is just what the present Hindu Code Bill is going to do for us. I do not find anything Hindu about it. It can be more properly called an 'un-Hindu ' or ' Anti-Hindu ' Code.

Mr. Nazruddin Ahmad (West Bengal : Muslim) : Muslim Code.

Pandit Lakshmi Kanta Maitra: Whatever else it may be, it is not a Hindu Code. It does not breathe the spirit of Hinduism : it recks of un-Hindu ideas : a spirit of supreme contempt for anything Hindu permutes the whole Bill from the beginning to end.

Shri H. V. Kamath: What is the Hindu spirit ?

Pandit Lakshmi Kanta Maitra : Sir, do you call that Hinduism '? You please think over your system of marriage and inheritance which form the cornerstones of Hindu system or Hindu society ; are you going to undermine it in the way in which you are going to do ? That is the question that you will have to answer not only to us here but to our countrymen outside and to the posterity.

Sir, I do feel that if we codify the law in the way it is sought to be done, as a simple intellectual pastime, codification for the sake of codification, I will plead with my honourable friends that it is unwise to do that. It is not necessary. No need for it has been felt by anybody. Look at the opinions of the judges of the different High Courts and the District Courts. They are the people who have to administer the Hindu law. Has the Government got a vast volume of opinion embodying the demands from the judiciary that Hindu law require codification and that also in the way in which it is sought to be done ? No. Has there been such a general demand from the people who have to guide themselves, guide their lives and conduct by the provisions of this law ? Have they demanded it ? Has there been that kind of demand ? My honourable friend to the right says : No. It is perfectly correct.

Shri L. Krishnaswami Bharathi: He supports you.

Pandit Lakshmi Kanta Maitra : My honourable friend says : he supports me. He supports truth. The country will be taken by surprise at what we are doing. Let us not lay the flattering unction to our souls that we are doing a wise thing. I know I cannot deceive myself in the way in which you are doing. Even if it were wise, I would not have thought it necessary to attempt that

codification, because of the reasons I have given. You cannot give any uniformity to it whatsoever; and if Hinduism is anything, it is because of its fundamental unity in the midst of diversity. That constitutes the essence of Hinduism. Hindu law and Hindu culture. In a vast country like this you cannot expect a uniformity standardized sort of life ignoring the natural variety. If you did it, it is no wonder that you would come to grief. You may not realize it just now, but realization would come when the time comes. After all even after this codification, is it going to serve your end ? I say: no. The honourable member from Mysore yesterday made a speech. He said, now the work has been made so simple that by buying a publication worth four annas or six annas you could know exactly what the Hindu law stood for. So many friends shout ' quite right ', ' quite right ', but do these enthusiasts-realize that even the sponsor of the Bill does not pretend that he is going to codify the whole law of the Hindus ? In the preamble he makes a modest claim, not that kind of preposterous claim ; He says:

" Whereas it is expedient to amend and codify *certain branches of the* Hindu law now in force in the Province of India."

Therefore what is proposed to be done is to codify certain branches, such as the law of marriage, law of inheritance and law of adoption. Broadly speaking these are the main things.

Shri L. Krishnaswami Bharathi: What is left.

Pandit Lakshmi Kanta Maitra : My honourable friend asks what is left in the Hindu Law. Does my honourable friend think that this is all that the Hindu Law stands for ? These three branches cover the entire field of Hindu life and activity in this country ? I can only sympathise with his ignorance. What about joint family property, partition, joint family business, religious and charitable trusts, gifts, transfer *inter vivos*, and other things ? They constitute a much vaster field which is left uncovered.

Shri L. Krishnaswami Bharathi: Wills is also referred to.

Pandit Lakshmi Kanta Maitra : A mere reference to Wills does not mean that it has received a full and comprehensive treatment. In any case. I am grateful to Dr. Ambedkar. He is modest ; he never claims to have brought forward an exhaustive Code. If my honourable friends on my right think this is all the Hindu Code, they are out Ambedkaring Ambedkar. Sir, even if this Hindu Code is adopted in the form in which it has been brought before us, it will rail of its purpose for another reason also. My honourable sister Durgabai and my honourable friend from Mysore said yesterday, well, why do you worry about this : this will not lead to fragmentation of agricultural property. I do not know whether they realised that they were furnishing one of the strongest arguments for rejecting this Bill. Unconsciously, my sister and

brother have furnished one of the strangest arguments for the rejection of the Bill outright. You are going to regulate the disposition of property. It is now generally accepted that 90 per cent .of the immovable property in this country is in the villages, in the provinces, leaving aside the Centrally administrated areas. Therefore, they would be out of the purview of this Code. To house or other immovable property inside the Centrally administered areas, directly under the Government of India, this Code will apply. Then, how is this claim satisfied that this Code applies to all the Hindus in all provinces ? This is a very strong argument for throwing out the Bill ; throwing out on the ground that it fails in its objective. Besides the three categories I have mentioned, there are so many things which have yet to be covered. The argument would be that provincial agricultural land is purely a provincial subject according to the Constitution Act ', so also are religious and charitable trust properties, so also joint family property, and partition, self acquisitions, etc. When this vast Field would lie uncovered. I ask the House seriously whether they are really satisfied with the claim of those who think that this is going to be an exhaustive Code or an all embracing Code and that it provides the panacea for all the social and economic ills to which Hindu flesh is heir to Do they really believe that the 139 sections will be the vitamin tablets which will go to vitalise the whole Hindu society ?You may hold that view ; the House may hold that view; I do not hold that view. On the other hand, I think this is premature, absolutely premature. Even if the Hindu Code be passed into law, it could not come into force all until the provincial Governments pass similar legislation in their own provinces for devolution of agricultural land. Every single province will have to do it before this Act could come into force in all the provinces, I am not now talking of the states; I am talking of the provinces. Besides, it is not inconceivable that the provinces may be taking different decisions. It is not for the Central Government to force the Provincial Governments to legislate on a particular line of succession, a particular line of devolution of agricultural property according to its dictates. Then provincial autonomy will fail to the ground and I am certain that the provincial Ministries will not touch such a proposal from the Centre even with a pair of tongs if such direction went counter to their own views.

Mr. Deputy Speaker: May I state for the information of the House that there are as many as 37 members—1 have received chits, letters and so on from them—who are all anxious—most of them, if not all—to put forward their view points on this Bill. I would therefore suggest, however interesting the speech of the honourable member might be, that the points that have been raised on one side in support of the Bill may kindly be answered by others. Thus, all the points would be threshed out and this will contribute to the

richness of the debate as well. Dr. Ambedkar has given a clear analysis of the Code with arguments. Of course, the House would like to know how those points are wrong and how they are met on the other side. Therefore, greater attention may be paid to that and also regard may be had to the number of speakers that are in the waiting list.

Shri H. V. Kamath : May I request you, Sir, to consider, in view of the vital importance of this Bill, that two or three days time is hardly adequate and that at least a week or two should be allotted for general discussion '?

Pandit Lakshmi Kanta Maitra : With great respect to the views which were expressed by you. Sir, if I have given the impression that I was filibustering, I am sorry. I may tell you. Sir, that this Bill is of such great importance that it would be utterly unfair to the House if you ask us to conclude this general discussion thus. Because, in the first stage, we had not the slightest opportunity to make a speech ; this is the stage after getting us committed to the principle of the Bill, in which we have to see how best we can serve our country, even within the limited sphere. If there are 36 speakers, there is the clearest possible indication that the Bill has now attracted serious attention and they want to give their viewpoints. Therefore, there is no particular sanctity to the period that is laid down for debates of this kind.

If we do not conclude the discussion today, certainly more days must be found for further discussion of this. This honourable the Law Minister is very zealous about it ; he can give another additional session for this ; if not, even in this session four or five additional days could be found. The matter must be thoroughly debated. I hope the House will not accept closure; nor do I think that a closure will be moved by the Chief Whip and a motion of this kind cannot be closed by whipping without ascertaining that there has been a full and sufficient debate.

Shri H. V. Kamath : Another point. May I request you. Sir, that the provincial MLAs who are not present here also be invited to come and participate in the discussion ?

Mr. Deputy Speaker: We will now adjourn.....

Pandit Lakshmi Kanta Maitra : I have not yet finished. Sir, I take it I may resume after Lunch.

Mr. Deputy Speaker: Yes. We will now adjourn for Lunch.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

The Assembly re-assembled after Lunch at Half Past Two of the Clock, Shri S. V. Krishnamoorthy Rao (one of the Panel of Chairmen) in the Chair.

Pandit Lakshmi Kanta Maitra : Before the House adjourned for the recess, I was trying to explain to it how this Code was bound to fail of its purpose in some of the material particulars. I explained that there was no necessity for

codification as the Hindu law in all its aspects was not only well established but well understood by the people who were governed by it. I also explained that those who are to administer this Act—1 mean the Judges, the judiciary of the land, including the highest—have never demanded that the law should be codified, and I also explained that the scope of the Bill was very very limited, and that besides providing for marriage, adoption and inheritance there was a water field which was left uncovered. While referring to the agricultural land, I may also point out to the House that according to the series of judicial decisions in this country, the question of land involves and embraces, a vast variety of interests and subjects, from the landlord of the topmost grade down to the tiller of the soil, the man behind the plough: and if the Provincial Governments of the different countries were to regulate the distribution of their property in different ways other than that indicated by the Central Act there was bound to be confusion worse confounded.

Then, Sir, I would like to mention that the Code has not only tried digesting the existing Hindu law within its limited sphere, but in that process of collating and digesting, a number of things have been introduced, a number of subjects, particularly in the matter of marriage and inheritance, which go diametrically against the established notions of the Hindus. Therefore, it is not merely a case of digesting, collating: not also merely a question of amending—because amending is a very mild expression: it does a good deal more than that. It introduces innovations, far-reaching changes, not only in the law of marriage but also in the law of inheritance. Sir, I wish I could explain to the House the full implications of the changes involved. But I am physically unequal to the task. I will try rapidly to explain how I look at these changes.

The two categories of changes which in my opinion and also in the opinion of the vast majority of my countrymen are very radical and sweeping, are those that relate to marriage and inheritance. Sir, my, honourable friend has no doubt provided for sacramental marriage in his Code. I do not know if in this country, up to the moment the Bill was drafted and given the shape it has now had, people really demanded of the Government of the land to prescribe a procedure by which marriages in this country are to be contracted. I think it is nobody's case that prior to the introduction of this Bill, people had not been marrying or there was a good deal of difficulty in getting ourselves married. But how the question of marriage would be improved I do not know. My fundamental objection to these marriages is, that while on the one hand it characterises one form of marriage as sacramental marriage, inside this sacramental cover there has been introduced a number of things which cannot conceivably be called sacramental or sacred ceremonial marriage.

Look at the prohibited degrees. Look at the character of the parties. It can easily be an inter-caste marriage, a marriage outside caste, marriage of *sagotras*, and at the same time it would be sacramental marriage. It is rather curious. Sir, that while a sacramental form of marriage is being prescribed, along side with it there is a civil marriage. I do not know how it finds a place in the Hindu code itself. However, they provided an entirely different thing but a most objectionable thing is that while in the sacramental form of marriage one particular class of prohibited degree is put in, in the civil marriage an entirely different category is put ; the ambit of the prohibited degree is narrowed down, so much so that the marriage in many cases becomes purely incestuous marriage. I do not understand, Sir, what necessity was there for this unless we by this measure, want to give direct encouragement to all manner of moral looseness and lawlessness, which unfortunately is invading the youth of this country. Are we here going to give this the *imprimatur* of our sanction ? That is the question I would ask my honourable friend very seriously to consider and answer, not in a spirit of banter or levity but with all the seriousness that a difficult social problem demands.

I feel that the basic conception of Hindu marriage has suffered the rudest possible shock by introduction into it of the matter of divorce which is so repugnant to Hindu notions of marriage. Hindu marriage as ought to be known to every one who professes himself to be a Hindu, who honestly takes pride in calling himself a Hindu, as I myself do, is a sacrament and not a civil contract and as such it will not be difficult for him to admit that divorce is absolutely foreign to its concept. Union by marriage, according to the Hindu Shastras is sacred and absolutely indissoluble (*interruption*). If you want me to cut short my speech you will kindly interrupt me only on important matters. I am not afraid of interruptions—I know how to answer them, I can answer them in my own way. But if you keep on interrupting me, my speech will be unduly long and you also may not feel happy over the replies I will give.

Babu Ramnarayan Singh: It ought to be so.

Pandit Lakshmi Kanta Maitra : The institution of divorce in this country, or in any country for the matter of that, has not been found to promote the well-being of the community for whose benefit it exists. As a humble student of sociology, I have had occasions to read reports of matrimonial courts. An honourable Member referred to Judge Lindsay and I believe he also had in view the " Revolt of the Youth ". I do not know whether my honourable friend realised that he unconsciously provided one of the stronger arguments for opposing this form of marriage when he referred to that great Judge. I want honourable members carefully to consider, if within the family circle we should permit matrimonial alliances to spring up between a person and his mother's

brother's daughter or his father's sister's daughter, as has been provided in this Hindu Code.

Shri H. V. Kamath: It is common.

Pandit Lakshmi Kanta Maitra : It may be common in South India, but South India is not the whole of India. My whole point is that if there is a particular form of practice in a particular part of the country, you should not go out of your way to see that it is provided for the whole country.

I come from a province which is not in the South. It is a backward province, educationally, culturally—call whatever you like that benighted backward province of Bengal. I know of the domestic conditions of the families inhabiting there. Go to any Hindu household in Bengal you will find that besides the sons, daughters, and other natural heirs, all manner of relations, sisters' sons, nephews, nieces, maternal uncles' sons, uncles' daughters, all knit together and maintained in the joint family system. They are all regulated and restrained by moral and religious influences. You will find it in almost every household.

The Honourable Dr. B. R. Ambedkar (Minister of Law) :, What is the difficulty?

Pandit Lakshmi Kanta Maitra: I shall tell you where the difficulty is. There is no difficulty for those who have no family of their own. The difficulty happens in this way. For dividing trouble here I shall illustrate with reference to myself. If in my family my sons, daughters, father's sisters' daughters and sons, mother's daughter's sons and daughters etc. sister's daughters were to live together and if one of my sons contracts intimacy with his first cousin even when he is a minor or an adolescent, knowing human nature being what it is, do you eliminate the possibility of this attachment growing up and culminating in marriage ? If you do, you are poor students of history, poor students of sociology and poor students of psychology. After all, the call of human flesh is there and no legislation, however omnipotent can root out this natural and powerful impulse in mankind. If you sanction matrimonial unions between blood relations—between closest relations in the household, I shudder to think what would happen to society ?

The Honourable Dr. B. R. Ambedkar:' Noticing.

Pandit Lakshmi Kanta Maitra : Nothing of course, if you do not care for society ; nothing, of course, if you believe in a kind of society only where there are only social butterflies sucking honey here and there and making merry; but I am for a society which has attained or will attain for India the position which is her own, the position for which she is respected all the world over. If you throw away all these things, if you put up a sort of Vademecum, a Hindu Code, where you find all sorts of marriages, between first cousins and blood-

relations sanctioned, if you legalise all these incestuous marriages the society will be a sink of moral degradation.

Shri L. Krishnaswami Bharathi : We protest the use of the word ' incestuous ' It is very wrong to condemn outright a system which is prevailing in large parts of the country. It is a reflection on a whole province.

Mr. Chairman : Order, order.

Pandit Lakshmi Kanta Maitra : Therefore, I cannot but raise my voice of protest against such a system, because I believe that marriage between first cousins is not conducive to the well being of society from the biological and engenic points of view and is opposed to the notions of Hindu Law.

L. Krishnaswami Bharathi: No, no.

Pandit Lakshmi Kanta Maitra: Thus, not only from the point of view of society, but also for the peace and purity of family life, I want that this should be condemned. It is immoral and outrageous.

Sir, my honourable sister, Durgabai, said quite rightly, that monogamy should not be opposed. I do not know of any honourable Member in this House who really does not want monogamy. Monogamy everyone of us want, not for our mere likes ; circumstances have forced us to accept this monogamous marriage. It is a fact. Polygamy has passed away completely from the upper classes of this country not by legislation. That is my main contention. If you want to eradicate a social evil you should work up from within, not from above. If my honourable friends look to the history of this country, they will find my position amply proved. We all know the miseries and sufferings of Hindu widows. There are so many cases of child and young widows which break our hearts or at any rate it ought to break our hearts. In fact, in the past generation, the late Pandit Vidyasagar of hallowed memory was so much moved by it that he got passed the Hindu Widow Remarriage Act. But the country was not prepared for it and what was the result ? The Act virtually became a dead letter and has remained so till now. That is bound to be the fate of all social legislation which have not originated from a demand from within the society.

I was telling the house that polygamy has virtually disappeared from the country for a variety of reasons such as a growing sense of responsibility in conjugal life. Growing consciousness among womanhood and above all the interplay of all manner of forces, most important of which is economic, which makes it impossible to indulge in the luxury of having many wives at the same time. Therefore, I say, there is no necessity for any legislation for it. It has automatically died out: the custom has fallen into disuse. It may be argued that there are some strata of society where it prevails. There also I want to sound a note of warning. You cannot stop it by force or compulsion. You have

got to create public opinion and when these unfortunate brethren of ours come to realise the evils of this system they will discard it. If, on the other hand, without bringing up their standard, without creating a consciousness in them by education and public opinion you try to thrust your legislation down their throats, I would request you to realise the effect that it will have on them. Just as my honourable sister was telling us they will say : This is our society ; it is such a cast-iron mould and they would not allow us to have another wife. We will go to another form of society, embrace another religion where this is permissible. Any sociologist, any man interested in social reform will have to pay heed to that as well. The fear is not altogether an unfounded one. Anyway I feel that if you codified the Hindu law, all that should have been done was to prescribe the essentials of marriage, the requirements on the part of the contracting parties, their ages, their mental and physical capacity, prohibited degrees of relationship and things like that. Those who believe in social ceremonies and functions, may go through the form of ceremonial marriage but the essentials of marriage should not be allowed to vary between civil marriage and sacramental marriage. If there is a demand in the country for inter-caste marriages I will not stand in its way. If people want to marry outside their castes, let them by all means invoke the provisions of the Civil Marriage Act of 1874. There is nothing at present to stand in the way of people who are anxious to marry outside their castes. If there are *bonafide* attachments among inter-caste boys and girls, it is not that we want to stop or prevent them. They have got the facilities open to them even under the existing law, the law to which I referred earlier. You can change that law. You can repeal or modify certain provisions so that people marrying under that Act will have their children governed not by the Indian Succession Act as at present but by the Hindu Law. I have no objection to that but I fail to understand why in a Hindu Code side by side with the sacramental marriage you are allowing civil marriage. This must be completely taken out of the Code which should have nothing to do with it. There may be a separate civil marriage law for all.

Sir, I personally feel that if you insist on having the question of divorce in it, then you will have to face the music of it everywhere in the country and unless as public men you have your ears stuffed with cotton, as most public men among us have, you will have to pay very very dearly for it. In any case, as a Hindu, I emphatically protest against the introduction of this heterodox concept of divorce into the scheme of Hindu marriage.

Now let us come to the question of inheritance. There has also been an innovation in this regard though I do not want to go into very great details. But there also I would like to tell my honourable sister, Shrimati Durgabai, that we

are firm believers in the judgement of the Hindu law-givers of old : we are firm believers in the equality of the sexes, though not in the sense in which she talks or her friends talk. Equality must be in the sense of equality of opportunity. You cannot make physically man and woman the same. Equality must therefore have some other meaning. There is no feeling of inferiority attached to women, there is no discrimination with regard to the education of daughters or their marriage. Our shastras have provided :

" *Kanyapyevam Palaniya, Shikshaniyatigatant Deya Boraya Vidusha, Dhana Ratna Samanvita.*"

It means that the daughter also should be educated in the same way as boys, and in the fullness of lime, given over in marriage to a proper groom with dowry including rich jewellery. And in my society, in the Hindu society it is enjoined: " *Yatra naryastu Pujyante, Ramante Tatra Devata.* " It means that Gods bless the households where women are honoured. Women folk has been accorded such a high and exalted place in Hindu society. I do not deny that there may be hard cases: there are hard cases, where women are not treated in the way they ought to be. But if you have fallen off the ideal of your sages, your saints, your lawgivers or your leaders, they are not to blame for they have not let you down. The blame attaches to us. If you cannot approximate to the ideals of Mahatma Gandhi in your conduct but preach them in season and out of season or take his name in everything but not follow in his footsteps, the fault is not Mahatmaji's, the fault is ours. Similarly you cannot impugn your Hindu Shastras or law-givers. They have set the standards quite high and it is for you to act up to them. Notwithstanding our best efforts it is not possible to eliminate every case of injustice or hardship. Human institutions are imperfect. No human ingenuity can devise any procedure, any machinery or any agency by which all possibilities of social injustice can be completely eliminated. Let us be frank about that and let us try to realise that.

My honourable friend said in connection with the management of property that she knows of women who are better managers of property ...

The Honourable Shri N. V. Gadgil (Minister of Works, Mines and Power) :
Of men also !

Pandit Lakshmi Kanta Maitra: Exactly, of men also. I do not think there is any single married man in this House who will dispute that proposition. In the household she is the ruler: she is all in all. The tallest of us. The Law Minister or his honourable colleague will have to crouch before her however much he may thunder here. There you are ruled not by the rod, but by a strange sort of a whip, a soft, sweet silken cord made up of Filaments of love which takes off all harshness and roughness, and menfolk have cheerfully submitted to her

rule. She is the queen of the household. Many married people, I think most married people, would frankly admit that.

Shri L. Krishnaswami Bharathi : That is how we have cheated them.

Pandit Lakshmi Kanta Maitra : We are now going to cheat them by this Code. Do you think the greatest justice will be done to them if you simply give them right to property. Mr. Chairman, according to the Hindu notions, a girl has a distinct position, a role entirely different from that of a son. Any honourable member who has read Sanskrit literature or has any knowledge of it—I cannot make any presumption either way, whether most people know it or no one knows it...

An Honourable Member: The Law Member knows it.

Pandit Lakshmi Kanta Maitra : He may know it, he is a scholar. Well, in *Sakuntala* of our immortal poet, after the marriage of Sakuntala and her departure to her husband's place, there occurs a *Sloka* which is classical and which gives you in a nutshell how the Hindu lawgivers and the Hindu society look upon their girlhood. Immediately after Sakuntala left the hermitage for her husband's place, sage Kanwa said, " Today I feel relieved " :

" *Artho Hi Kanya Parakiya Eva Tarn Adya Samp re shy a Pratigrahita. Jati mamayang Bishadah Prakamarn Pratyarpit Nyasa Ivantaratma. "*

" This my heart, my inner self today has been relieved of a heavy burden and I get that inner pleasure of relief. " What was that burden ? A daughter in the family is like a trust deposit of somebody else's money and just as one feels relieved as soon as that trust or deposit is made over to his rightful owner. So do I feel today having made over Sakuntala to her husband, (*Interruption*) Not in these days of law of limitation ,but I am talking of those days. " Nyasa ", means a deposit, trust. If my honourable friend Dr. Kamath wants further interpretation, I am perfectly willing to give that outside the Chamber.

Shri H. V. Kamath: But I am not a doctor ?

Pandit Lakshmi Kanta Maitra: More than a doctor: you are doctor, philosopher, lawyer, and legislator. I have great respect for you; you are a nice chap and above all a great patriot.

Sir, that is the conception of girls. So, if the Hindu law-givers did not give them a right of ownership equal to that of the son in the family, it was not because of any aversion, not because of any dislike but because of the simple reason that the girl is made for her husband's family; she is not to become a part and parcel of the family where she is born. That is the whole thing. And therefore no question of injustice or inequality arises. I do not know of any school of Hindu law prevalent in any part of the country where a daughter has been given a distinct share equal to that of the son in the

property of her father.

Shri A. Karunakaran Menon (Madras: General): It exists in Malbar.

Pandit Lakshmi Kanta Maitra : I am glad that in the South they have got so many things.

Sreematty Annie Mascarene (Travancore Slate) : In Travancore too, sons and daughters share equally.

Pandit Lakshmi Kanta Maitra : I am grateful for this information but all such information emerges from the South ; and if my friends from the South..

Shrimati Hansa Mehta (Bombay : General) : Are they not Hindus in the South ?

Pandit Lakshmi Kanta Maitra: Yes, but if they are proud of all that in the South, let them not deny us our legitimate right to feel proud of our manners and customs in the North and North-east. That is my humble submission to them. I do not like this type of argument. Because some order of succession, some order of inheritance prevalent in Bombay or some other part has been found suitable there, therefore it must be bodily transplanted into Bengal and elsewhere regardless of all considerations whether it is a plant which can grow and thrive in that particular soil. If a particular institution has been found to work very satisfactorily in the South, it must be allowed to work there ; But if it is not found suitable for the soil of the North or the soil of the East or the soil of the West, I do not see any reason or justification for forcibly transplanting it there.

In fact my one very serious objection to the Hindu Code is this : for this craze for theoretical uniformity you ignore completely variety; you have got these things in this part and those things in that part : that itself shows that in this vast country of ours, peculiar social manners and customs have developed according to the needs of particular places or areas. They must be left undisturbed. In clause 7, however, the Bill provides an overriding power by which all usages, immemorial customs which have the sanction of law should be scrapped. I think it is clause 7.

An Honourable Member: It is clause 4.

Pandit Lakshmi Kanta Maitra: I will take it on my friend's authority. Sir, this in my opinion, is highly objectionable. Clear Proof of usage out-weighs the written text of Law. This is a well established dictum.

There are diversities of customs and manners because of the diverse needs of the people that compose this vast continent. And therefore :

Veda vibhinna Sinritayah vibhinna, Nasau munir Yasya matam Na Bhinnuin. Dharmasya Tathvum Nihitum Guhayam. Mahajano yena Gatah Su Pantha

An Honourable Member: Let us all be *mahajans*.

Pandit Lakshmi Kanta Maitra: *Mahajan* does not mean a moneylender.

That is the most unkindest cut of all. That indicates the depth to which society has fallen. We cannot think except in terms of rupee or dollar or shilling or pence. Mahajan has been variously interpreted : as great men; or majority of men. Take it in whatever sense you like.

Veda khila Sadachar Swashya cha Priyamatmana, Yasmin Deshe Yadachara.

I do not want to weary this House with a lot of other quotations but this is such a subject that I cannot altogether avoid it if I am to convince honourable Members of the justice of my contention based on Hindu shastras. I have to make myself clear before the House. It may reject what I say; it does not matter; but I represent a constituency—not a purely territorial one—but the constituency of a vast body of men and women who believe in Hinduism and Hindu Society governed by the injunctions of Hindu sages of old. Sir, I represent for the lime being the views of that constituency. It is true that I have been returned to this Constituent Assembly by indirect election—with four or five votes only, but I may assure the House that I have fought some of the most contested elections in the country from some of the most important constituencies. Immediately before coming to this Constituent Assembly I was representing the city of Calcutta in the Central Legislature. Before that, I was representing the Presidency Division composed of several districts with lakhs and lakhs of people, and the Presidency Division is admitted to be one of the most cultured divisions in India. I know the people. I know their pulse. My native town is a famous seat of ancient classical learning. It is my district Nadia, in Bengal, that gave the new schools of *Smritis*, *Tantras*, *Nyaya*, *Baishanava* Philosophy etc. I am not digressing but I shall be failing in my duty to the inheritors of this great culture if I did not try to place before the House their views and ideas with regard to these matters of the Hindu Code. I owe it to myself and to my community to give my views so that judgement may not go against us by default. Any way, Let me hurry on.

I have shown you the place, the honour, which our *Shastras* have given to our women. The famous queen Indumati was dead and King Ajah was bemoaning her death thus:

Grihinee Sachiva Millah Sakhi Priya Shishya Lalita Kalavidhan, Karuna Bimalkilena Mrityuna Harata vade King Na Ma Hritam " Oh ruthless God of Death ! What have you not taken away from me ? What mischief have you not done to me? By one blow, you have taken away one, who was my Grihinee—you know what Grihinee means, the queen of the house—who was my Sachiva—Sachiva means Minister. She was my minister. Not only was she the queen of my family but my minister, my bosom friend in privacy and my

devoted playmate in love. "

That, Sir, is the position which our womenfolk used to occupy in our society. Therefore, it cannot be said that out of sheer greed, grouse, animosity or jealousy or whatever you call it, the womenfolk has been relegated to a position of inferiority. If she has not been given a distinct status in respect of inheritance co-equal with the son, it is because she is meant for some other family than her father's and that the property is to be settled with the persons who will keep up the family, who will maintain the lineage and preserve the sanctity of the family traditions, manners and customs and who will continue the practices and the ceremonies of the family. As soon as a girl is married she becomes integrated into another family; and according to the Hindu conception the status of a wife in the husband's family is a most respectable status—far more respectable than the status of the girl in her own father's house. I will again quote Kalidas' Shakuntala. When Queen Shakuntala could not be recognised by King Dushyanta, who said: " I do not remember to have married you. " Thereupon Shakuntala was exhorted by the Rishi to remain in her husband's House even as a maid as that was a more honourable position than to be in her father's place.

The Honourable Shri N. V. Gadgil : That is how men behave !

Shri M. Tirumala Rao (Madras : General) : He was suffering from loss of memory.

Pandit Lakshmi Kanta Maitra: No, he was not suffering from loss of memory. It was because King Dushanata was under a curse by which he was to forget everything connected with his marriage; not that he was guilty of a deliberate moral lapse. Amazing ignorance !

Shri B. N. Munavalli (Bombay States): What an excuse!

Pandit Lakshmi Kanta Maitra : I am not the author of Shakuntala. Call it an excuse or whatever you like, I do not mind. But I quoted Shakuntala because its author Kalidas is a world Poet commanding respect all over the world : and notwithstanding all your disparagement of Shakuntala. it will remain the ideal literary master-piece of the world for all time. There ought to be some limit to which disparagement of our national institutions, culture and traditions can be tolerated. Mr. Chairman, I am reminded of a very famous passage in Plato— I cannot recall his words exactly now—but he said, in effect : " Anybody who is false to his nation's traditions, to his glorious heritage and culture is a traitor and is a person who should be given capital punishment ". I do not understand the patriotism of those, the nationalism of those, who have nothing but contempt and jeer for anything that is their ancient culture and heritage.

Shri H. V. Kamath : You have misunderstood. Nobody is against our

ancient cultures.

Pandit Lakshmi Kanta Maitra : We might differ on many matters in connection with this Code, but nobody's purpose will be served— neither mine, nor yours—by trying to belittle our great ancient sages. They are not coming here for applause. They do not care for your radio propaganda and newspaper flashes. They did what they considered to be in the best interests of the Community. If today you are going to make a daughter co-equal with the son in regard to inheritance, I am afraid a good deal of complications would arise. When the girl knows that she is getting a share in her father's property, when her brothers know that their sister is a co-sharer and as such the property will pass off to some other family with her marriage, whose interest would it be to marry off the girl ? I want to know.

Shri H. V. Kamath: Her own.

Pandit Lakshmi Kanta Maitra : My honourable friend says it will be the girl's own interest to marry as quickly as possible. I feel. Sir, that such a girl will find many a pitfall lying about her way.

Shrimati G. Durgabai : You distrust her ?

Pandit Lakshmi Kanta Maitra : Not a question of distrust. The Hindu sages have provided that marriages should be negotiated in the best interests of the pair by the guardians of the pair.

Shrimati Renuka Ray : What did Shakuntala do ?

Pandit Lakshmi Kanta Maitra : I know that Shakuntala did not marry that way, but my friend and sister's interruption reminds me of a story. A man had the Mahabharata and the Ramayana recited in his house for six months. Thereafter he asked his daughter. " You have heard the story. What is the lesson you derive ? " " Well," replied the daughter, " from the Mahabharata I learn that I can have five husbands as Draupadi had five husbands. " From the whole of the Mahabharata this is all that she learnt. Enquired about the lesson she derived from the Ramayana the daughter in law replied, " It is very clear. As soon as my husband dies I can be married to my husband's brother. " " You know what happened after Ravana died, his widow Mandodari married his brother Bibhisana. " Sir, according to Hindu Law there have been several systems of marriage. There was the Gandharva form of marriage for which we have not provided here, though we have the provisions in the Code for Civil Marriage to cover all manner of such cases. So, I say that in an ordinary Hindu house-hold, under this codified Hindu Law, you are going to bring about a change in the relationship between the various members. Is this going to make for the sweetness of relationship or peace in home life ?

Babu Ramnarayan Singh: By no means.

Pandit Lakshmi Kanta Maitra: There is not going to be that sweet

relationship between brothers and sisters and sisters' husbands that now exists, because after a girl is married, she will have her husband or her son or somebody else in her father-in-law's house to control the property of her father's family and there is bound to be bitterness, bad blood and jealousy litigation and all the rest of it. Ultimately the family will break up. Are we going to enact a Code which will facilitate the breaking up of our households ? Will the *summam bonum* of Social life be readied when every single family is broken up and domestic peace driven away ? It is for you to consider whether this should be done. I feel that these things are bound to happen.

Sir, a girl may be educated. But after her marriage when she goes to her father-in-law's house, she is being guided and dictated in all matters either by her husband or by some relation of his and it will not be in her interest to endow her with a share in her father's property by legislation here. You will say you will pass another legislation to prevent her from being dictated in respect of the property she has got from her father. If you are going to endlessly legislate in that way, in order that you may have the intellectual satisfaction of having a Hindu Code, I would leave you alone. I therefore, think that this is a revolutionary change and this should not be introduced. This does not mean that I am against making provision for girls. By all means make provision for them. Make any provision for unmarried girls. Make her marriage and her education the first charge on her father's property. Make it absolute charge on that property so that on her marriage when she will be absorbed in the family of her husband, she will be divested of her interest in her father's property. But that is not what you are doing. You talk of equality of sex, justice and fairness but are allowing the girl the right to inherit not only her father's property equally with the son, but also to share her husband's property or father-in-law's property. This is equality with a vengeance. The girl should not get property from both sides. This will also lead to further fragmentation of property.

Shrimati G. Durgabai : The boy will get a share of his mother's property ?

Pandit Lakshmi Kanta Maitra: A daughter whether married, unmarried or widowed will get her mother's property. Let my honourable friend read the Hindu Law. Even as it is under the Hindu Law, all categories of daughters are entitled to *Streedhana* property.

Shrimati G. Durgabai: No, no, no, no.

Pandit Lakshmi Kanta Maitra: I say, yes, yes, yes, yes. Thus the daughter is provided according to the present Hindu Law. I cannot go on correcting the misapprehensions of others. The Hindu law is there. The members of the legal profession know it. I need not labour the point I believe, that there is sure to be more fragmentation. This will inevitably lead to increased

testamentary disposition and consequent litigation and ultimate ruination.

An Honourable Member: Already there is fragmentation.

Pandit Lakshmi Kanta Maitra: Yes, but two wrongs do not make one right. Because there is fragmentation already, is no argument for making provision for further 'fragmentation in the shape of more shares to properly.

Sir, in this field of inheritance, another innovation has been introduced and I think that is the most devastating of all changes.

Shri B. Das : That is not the principle of the Bill. You can drop it.

Pandit Lakshmi Kanta Maitra : What is the principle of the Bill ?

Shri B. Das; I am referring to partition and that is not the main principle.

Pandit Lakshmi Kanta Maitra : The system of inheritance is the backbone Of the Bill. Under this Bill you are going to scrap the Mitakshara law. Make no mistake about it. The right to property by birth and survivorship, which is the basic foundation of Mitakshara law, is going to be swept away. This Mitakshara system of law has been governing the country for hundreds of years till there was evolved in Bengal the Dayabhaga law founded on the principle of natural justice and affection. Many of my friends who are supporters of the Bill have told me that I should be the last person to oppose it inasmuch as it introduces the principle of inheritance enunciated in the *Dayabhaga* law of my province. My reply to them was that that was no satisfaction to me. I do not want even if the well-meaning Social Reformers in India wants that that system should be adopted. Even if a superman or dictator comes and tells me: ' Look here, the law of inheritance in Bengal should be made applicable to all India ', I would be the First man to raise my voice of protest against it. The old system has stood the test of lime. The change might suit my province, but not all India. I do not want that this *Mitakshara* law of inheritance should be scrapped in favour of one which is neither the *Mitakshara* law of inheritance nor the *Dayabhaga* law. It is a hybrid mixture of both which is conducive to the welfare of none, tending to bring about the disintegration and downfall of Hindu society as it will completely unsettle a well settled order of things.

I think I have exhausted the patience of the House and must bring my speech to a close. (*Honourable Members* : ' No, no ') I have dealt with inheritance, I have dealt with marriage. I feel that those two branches of Hindu law which are sought to be drastically amended should get fuller consideration. But it will be a tragedy for India, for the Hindu society, if in the name of reform, you uproot the Hindus from their safe and ancient moorings which have protected them from the stress and storm of centuries. Let me again repeat that our Shastras, besides making elaborate provisions for all matters of social life, left a wide field to well-established local customs and

usages. They have been very salutary in their effect, as stabilising forces in society. If we ignore them and make a fetish of codification we will cast Hindu Law into a mould absolutely inflexible, rigid and cast iron; we will be importing into it unnecessarily a character which never belong to it. We will be transforming it into something, which will never be able to adjust itself to the needs of times, as it has been in the past.

Sir, before I conclude. I will touch on the argument which has been advanced here also, but which has been very lightly brushed aside by those who do not like it. It has been argued—and I believe perfectly rightly—that this Legislature is not competent to deal with it.

Shri L. Krishnaswami Bharathi: Legally incompetent ?

Pandit Lakshmi Kanta Maitra: Yes. I feel that it is not competent. In any case, if you take shelter behind legal formation, I will tell you, morally you have absolutely no justification for passing this Code. I know this objection was raised not only from people like us, but by people very highly placed in the political life of this country, by people with high political stature; for instance, by a man of the eminence and standing of the Honourable Dr. Rajendra Prasad, the President of the Indian Constituent Assembly, the sovereign body by which in season and out of season, we are all swearing. I want to know whether or not his views deserve our best consideration. Personally, I have very great respect for him. He is not only the uncrowned monarch of Bihar, but he is one of the undisputed leaders of India. Dr. Rajendra Prasad has given the clearest possible indication. He knows not only the people of Bihar but Bengal as well and also other provinces. He sal up his practice in Calcutta and upto the middle of his life he lived in Calcutta. It is not for nothing that he gave the warning that the Constituent Assembly constituted as it is today, ought not to discuss a legislative measure of this nature. I can speak for myself. I cannot speak for others. I honestly feel that I have absolutely no right, legal or moral to be a party to any measure, any legislation, which is not absolutely necessary for the day to day administration. I was resumed to the Constituent Assembly with four votes only. I can honestly declare here and now that when I sought all those four votes from the Members of the West Bengal Legislative Assembly, I never promised them that I would give them the right of divorce. Neither did they ask for it. I declare that I never promised them that I was going to scrap up the law of inheritance. I never told them that I was going to the Constituent Assembly to create a fresh Portfolio and a Ministry of Marriage, because I feel that such an institution will be necessary here in the Central Government, if this Bill goes through. Look at the formalities that have been provided here. So, personally speaking, I feel that I have no right to give my assent or

dissent to this. I can only tell the House that I am not competent, because I had no specific mandate from my Constituency to do it. When I came in through the General Elections there were clear issues before the Country such as the attainment of the freedom of the country and all the rest of it ; and the last time we came here, we were enjoined only to draw the Constitution of India. Therefore, it might gratify our vanity that we as members of the sovereign legislature of the land are competent to enact such a legislation but the claim is shorn of all moral content whatever. Nothing would have been lost if we had deferred the consideration of this Bill to some future date after the next General Elections. I emphatically maintain, Mr. Chairman, that the time chosen for its passage through this House has been most importune. After the attainment of independence, problems after problems have been confronting the National Government. Have we been able to solve them ? We have not. Are we in the country very popular ? By 'we' I mean ' all ' including that side. No. Frankly, because we raised expectations which we have not been able to fulfil. That may be due to a variety of causes over which we have had no control; that may be due to an interplay of forces, which took us unawares, absolutely unprepared. But throughout the country you find simmering discontent. As a matter of fact, I do not feel inclined to disclose my identity as a member of the legislature, of the Constituent Assembly, when I travel in a railway compartment, because the moment they come to know that, they start vigorously criticising us.

Shri B. L. Sondhi (East Punjab: General) : Then go by air.

Pandit Lakshmi Kanta Maitra : I have started going by air. Quite true. There also I fare no better. I am not joking. I really feel that the country has become sick of us, disappointed of us because of our failure to do anything real for the common man. Hitherto there had been the Kashmir question. There is the question of commodity prices. Yesterday we had a brilliant performance with the unfortunate— enhancement of post-card rate and the price of cloth.

Mr. Chairman : The honourable Member may confine himself to the Bill.

Pandit Lakshmi Kanta Maitra: I am only saying that the rise in prices of commodities, labour strikes, the Communist menace, refugee problem etc. have been too much for the government. Is this the time for us to go on with this luxury of Social reform legislation, and a very highly controversial legislation at that ? It is sure to give rise to the bitterest acrimony ; and as a matter of fact, it has already brought about a lot of acrimonious controversy. I believe honourable members have been already flooded with literature (*Interruption*). Of course, from the Anti-Hindu Committee, and similar societies and associations from Calcutta and elsewhere. I have got protests

from the Women's Association in Poona, I have got protests from Women's Association in Bengal, the members of which come from the highest aristocracy in the land. I have not known of any Bar Association in Bengal which has not protested against this. I have not known any Bar Associations which have supported this Bill. I have in my possession perhaps the whole literature that has been circulated so far in connection with this Bill. I have classified it and the dead weight of opinion is ainst it, qualitatively and quantitatively. I again say that the time is not opportune. At when, according to our Prime Minister's appeal we should close our ranks, put our heads together, devote all our lime and energy and work in amity and concord so that we may solve the problems of the land, we should not give another cause for disruption, another cause for discord or grouse or discontent in the country. I do feel nothing is to be lost if we shelve this Bill for the lime being. If that is not done, then, of course, I promise that I will have to oppose this Bill at every stage. I oppose this Bill, because I feel that it is a wholly unwarranted measure and that there has been no demand in the country for a legislation of this kind. I oppose it because I feel that in all social legislations we must go slow and that we cannot bring about large scale social reform by legislation alone. The reforms will have to come from within by force of public opinion which has to be created inside the society. Thirdly, I oppose because of the most irregular manner in which this Bill is sought to be passed in this House. I oppose because I feel that I am not morally competent to discuss this Bill and pass it in the Legislature as it is constituted at present. I oppose this Bill because I feel that it has brought in radical changes in the concept of marriage, in the scheme of Hindu Law including the law of inheritance and succession. I oppose it because I feel that it will create endless and needless complications including such things as Civil Marriage Register, Sacramental Marriage Register, Marriage Notice Book, Director General of Marriages, Registrar Generals of Marriages, Ministry of Marriages, and so on and so forth. I oppose it on the further ground that it would give rise to bitterness, disunion and discord in our families leading to the disintegration of society. I oppose it on the further ground that it is undemocratic inasmuch as a vast body of opinion in the country is against it. In view of all these, I feel I am morally called upon to oppose this Bill with all the force at my command.

With these few words, yes, these are few words in view of the enormity of the legislation. In view of the gravity of the issues involved ; these are few words in view of the opposition it has roused and the repercussion it will have on the society. Anybody who really wants society to be protected against this menace coming from the legislature cannot but be articulate and discursive; he has to devote time to the full and dispassionate consideration of things; he

must give his humble bit of advice of caution to the legislators so that they may not drive us along the wrong path and that the society may not slip down the declivity into ruin.

The Honourable Shri N. V. Gadgil: I have been somewhat provoked to participate in the discussion on a Bill which undoubtedly is revolutionary. I have heard with the greatest respect the speech of my honourable friend with whom I had the honour to work in this House for more than ten years. If there is anything which distinguishes him most, it is his earnestness which is only equalled by his great eloquence. I entirely agree with him that in matters of social reform one must go slow. On that point, I have not the slightest doubt. But this Bill has proceeded so slow that some of us have rightly complained that it has not been passed much earlier. As far as I know, this Bill or at least the main provisions of this Bill have been before the house or its predecessor and before the country including the members of the Bar for nearly eight years. It cannot be said by any stretch of imagination that this Bill has taken either this House or the country by surprise.

I well remember in 1945, at the time of the general elections, I was opposed by certain groups precisely because I stood for social reform, because I stood for the codification of the Hindu Law. The very fact that I was elected and I am still here is an indication that I carry the views of my constituency.

A point has been made by my honourable friend Pandit Maitra that this House is not competent to pass a legislation of this character. I think this objection I have heard so often in the course of the last fifteen years that every time when a social reform Bill was before the House, the same objection was raised. With what result, everybody knows. If this House is competent to pass the Constitution for free India, I fail to see how it is not competent to pass this legislation. As if to reinforce the agreement with a personal appeal, my honourable friend Pandit Maitra referred to the views expressed by Honourable Dr. Rajendra Prasad. I have, and, in fact, every person in this House has, every respect for Honourable Dr. Rajendra Prasad. Yet, there is a duty which every member of this House owes to his conscience and to his constituency and to this great country in which he lives above everything, not merely as a legislator, but as a person who visualises the reconstruction of Hindu society and he would be failing in his duty if he were to take into consideration only the personal views of one eminent person or another eminent person. When I say this, I say it in no spirit of disrespect, but because I feel duty is higher than any respect for any individual.

The main point is, has the time not come for the codification of the Hindu law ; has the time not come for the introduction of certain reforms in the

system of marriage, adoption, inheritance and all other things which go to constitute what is generally known as the Hindu Law. The sources of Hindu Law are so many. I do not want to dilate on this and I do not want to take much time of the House. But there is a clear case established that there must be some uniformity, some definitions about the interpretation of the law. If the law is not clear, if the law is not uniform, the stability of society suffers. If we have different interpretations of a particular text by half a dozen High Courts, I think the time has come when all this must be put an end to.

Further, my honourable friend suggested that we are attempting to destroy Hindu Society. My own feeling is that, here are about 290 persons who are in close contact with Hindu Society; here we can come together, ventilate our views and come to some agreement and adjustment and pass a legislation calculated to secure the further progress of Hindu Society. When Manu, Parashara and Yagnyavalkya wrote their *smritis*, they had not the benefit, I should say, of any legislature. They were undoubtedly great men', but I do not think that the race of great men died with them. On my left, I find a person so great in scholarship and character that it would not be wrong on my part to compare him with some of the old Rishis and law givers. If today, in addition to his own wisdom and learning, he requisitions the help and co-operation of all the 290 persons, I think his hands are strengthened and his views ought to appeal to us.

The main point, as I said was, has the time come for certain reforms and has the time come for the codification of Hindu Law ? If the time has come, it makes no difference whether one man promulgates a Code and the country accepts it, or whether it is accepted by the process of discussion in a democratic manner and the country accepts it. The main point is to judge it without passion, without prejudice and without entering into any extremist considerations. We have in this House to judge it purely on merits and not on sentimental grounds.

After all, what is it that is in this Code ? Except for the question of inheritance, there is nothing to which we have not listened so often and to which we have not agreed substantially. My own view is that there are two important things on which the controversy is centered. One is marriage: the other is ending of the co-parcenary in Hindu Law. So far as marriage is concerned, there is nothing revolutionary in this. In these days, when everything is pointing towards State control more and more, and when we are talking of nationalization, I think the only sphere for private enterprise is marriage.

Mr. Naziruddin Ahmad: Let that also be nationalised!

The Honourable Shri N. V. Gadgil : Now in this Bill a golden mean is

struck. The entry and exit in this sphere is so regulated that a modern man coming from the West would certainly laugh at our backwardness. He would say if marriage is a matter which is calculated to secure the highest happiness for both, then one of the grounds for divorce must be incompatibility of temperament. Have you gone up to that ? The grounds in the Bill are very narrow. In fact, I say that this is a very moderate measure. You do not expect a wife to carry on with a lunatic, a leper etc. and there is nothing in this Bill which runs contrary to the provisions of Smritis or which is inconsistent with the genius of Hindu society and culture. Most of us know the *Smriti*.

These are the grounds given in the ancient text and if something approximating to that is not available today in Hindu society, it is because we have become stagnant and all these dynamic urges for progress have ceased to operate. After all who, and to what extent of Hindu society will this effect ? Speaking for my own province, 95 percent have already some sort of divorce, not as a matter of law, but as a matter of custom. It is only the two or three percent of people of the upper classes who are opposed to it. But taking a fair view, the educated section is completely for it.

On the one hand I agree that divorce must not be made very cheap and that incompatibility of temperament should not be one of the grounds. But at the same time, marriage should not be considered a life sentence, if it virtually comes to that. After all, just as marriage has an individual aspect, it has also a social aspect. If the two spouses do not agree, then the bickering and the bitterness and the lack of harmony is not confined merely to the precincts of the family but it has wider application and effect, and society and the general atmosphere roundabout also suffer. If it is the desire of any law giver that whatever piece of legislation he wants to get through it must have the capacity of securing the results contemplated then we have to judge whether what has been all along with us has really given us the result we have asked for. It is a matter for introspection. If today we are providing some way out from wedlock in order to make people, who are readily not happy to get out of it, we are only doing what I think is our social duty.

So far as marriage is concerned, I fail to see how we can object to marriages between persons belonging to different castes. In the year 1949, it would be a sad commentary on our progressive outlook if a single person should stand up here and say—well, marriages between persons belonging to different castes should not be legalised. In free India, I think there is only one caste, the caste of free men : and one religion and that religion of humanity. (*Siri H. V. Kamath, ' And free women! '*). This reform has been before this country so long that those who feel that *this* means dissolution of Hindu

society, are enemies of progress ; such a Hindu society in my opinion ought to be dissolved. What is this that a man should be called untouchable because he is born in a particular caste. I have never seen a boy born with a broom : I have never seen a boy born in a Brahmin family with a *Yugnopavita*, nor a boy born in a Marwari family with a *Taraju*. All are born *Shudras* and after *Sanskara* a man attains higher status and when he has gone through the different stages of learning and accomplishment he becomes a *Shrotriya*, Here is the real spirit of Hinduism, not the spirit which is evinced by some of our old Sanantanic friends here and outside. If the object of this great country, as has been often given out to be is to make a classless society, then we must see to it that proper institution, both social and political are evolved and enlarged. I therefore consider that whatever recommendations are made in this Code as regards marriage are not only absolutely necessary, but they do not go far enough. But as I agree with my honourable friend. Pandit Maitra, that in social matters we ought to be slow, I am willing to accept this position for the time being.

The most controversial part of the whole thing is the elimination of the coparcenary from Hindu society. Something was said of public opinion. Something was said of the press and the bar. In my own province there is an association called the ' Dharma Nirnaya Mandal ', In this Mandal are to be found Mahmahopadyaya Tarkatirth Vidyavachaspati men of high learning and scholarship. Very recently they have passed a resolution and expressed views on the proposed Hindu Code:—

"The Dharma Nirnaya Mandal takes this opportunity, when the Hindu Code is on the anvil for consideration in the present session of the Assembly, to express its appreciation of the general liberalizing influence which is brought to bear in the framework of the present code. The Mandal sees this influence clearly in the removal of—

(a) distinction regarding joint ancestral and self-acquired property: (b) different treatment of sons and daughters: (c) technical difficulties in the interpretation of Women's Estate; and (d) distinctions between *Mitakshara* and *Dayabhaya* rules of inheritance.

The Mandal believes that the above reforms will go a great deal to minimise court litigations and foster national spirit and engender a feeling of oneness by this one Hindu Code being made to apply to all Hindus in the whole of India. The Mandal notes this as the first attempt ever made in this direction within historical memory.

This is the reason, why in spite of several differences in minor details, the Mandal heartily supports the present measure as it is."

Babu Ramnarayan Singh: What people do they represent ? The

Honourable Dr. B. R. Ambedkar: They are most learned and orthodox men.

The Honourable Shri N. V. Gadgil : But enlightened orthodox. Now, I come to the question of joint Hindu family. The house will no doubt agree with me that a progressive society ought to change with the change in times and that it should evolve appropriate institutions both of property and of laws. The time has now come to assess dispassionately the merits of the joint family system, both as an institution to secure family happiness and as an institution of property. Even today, if somebody gives me convincing arguments about the benefits of the joint Hindu family, I am prepared to hear him, for I am not dogmatic—I feel that truth is the real thing, not prestige for one's own views.

Now, taking the first point, has the joint family system secured happiness for the individual members of the family ? I am not speaking 'what the daughters-in-law feel when they have to live in a big family. What I have seen and heard definitely goes to show that so far as happiness and harmony are concerned, this institution has ceased to be of any use or value. After all there is nothing new in this. If out of 32 crores of Hindus nearly 5 crores are already governed by *Dayabhaga* and if that system has worked well, at least one cannot say that it is absolutely bad and that we must even think of it. (*An honourable Member*: It is absolutely new.) That it is new there is no doubt. But what is the society that we are visualising for the future ? It is of a patriarchal type ? What is exactly the nature of the society you want to reconstruct ? As I understand, that society is going to be one in which there will be equality of status and equality of opportunity because those are the two phrases we have incorporated in the Preamble of the Draft Constitution. I think with that Preamble the joint family property system is not consistent.

The real trouble seems to me to be—after having listened to the speeches of various members—what is being given to daughters. But as an institution of property the joint family system must go, because it concentrates wealth. People will ask me, " Well, has it or has it not done something good?" I at once agree that it has done some good. But so far as property aspect is concerned, so far as social credit aspect is concerned, other alternatives have already come into existence, such as co-operative societies and the joint stock companies. Therefore, there is no need of this institution so far as the creation of social credit is concerned. As a mechanism for business other alternatives have come into existence and by experience we have found that they give better results. Therefore, we are not destroying anything without putting something in its place; we are not leaving the whole society in a sort of vacuum as it were. What has outlived its usefulness is being liquidated so that new India will go ahead with greater speed and may attain greater progress.

Now, the real trouble as I said is about some share being given to the

daughter: whether it should be half or whether it should be something less are details which can be discussed later on. But one point is certain and that is that the daughter must get some share. In free India if you are only going to say that—

and then say that she should either go to a court of law or ask for maintenance, I say it is not fair.

My own feeling is that some difficulties may arise at the beginning; when new institutions come, when new thoughts generate; society does take some time to adjust itself. The question is not whether these difficulties are great or small: the relevant question is whether the new arrangement proposed is good or bad. If you are convinced that it is good, naturally there will be some difficulty in adjustment. We must not mind the difficulty at all.

It has been suggested that as soon as the marriage is over the bridegroom will start trouble, by suing or otherwise, for the share which his wife has got from her parents. It would be welcome to lawyers. Well, when we are trying to nationalise as much as possible, what little will be left will not be of great consequence, that people would go to the court for a small share of it. In times to come there will be little left both for the boy and the girl. Even if it leads to litigation, does it mean that we should not do justice? Because a good thing may be abused by a few, does it mean that it should be denied to all? It is for the House to decide. It is high time that the general talk of equality of sex must be followed by equality of ownership of property. If we do not do that we will have to face the charge of hypocrisy.

My honourable friend Pandit Lakshmi Kanta Maitra has prophesied all sorts of trouble for the great Hindu society. Such prophets have always been there in the past and they have always proved false. I have not the slightest doubt that Hindu society has got such a flexible nature that it has absorbed various cultures and if it has lived through the ages successfully it is because those who guide the affairs of the society had in time suggested changes suitable to the times. That is the reason why it has survived till now. Here is an attempt to bring the law in line with public opinion. What the law does is that it consolidates the public opinion but public opinion being dynamic by its very nature it goes ahead every now and then. It is like a horizon which recedes the nearer one goes to it. Modern society by its very nature progresses very quickly. Therefore, we have to adjust public opinion and the law of the land. There are other means by which it can be done, like legal fiction or equity but the best and the honest way is to do it by a piece of legislation. I think here is an attempt in that direction. Although I agree that it is revolutionary, it is a planned revolution and therefore it is going to be a success.

Mr. Naziruddin Ahmad : I have but a short time at my disposal.

(*Dr. B. R. Ambedkar: Why? You have your own time.*) I mean comparatively short time for the enormous subject which I have to deal with and I hope the House will give the subject that amount of thought and attention which I have given to it (*An honourable Member: What have you to do with it ?*) At the very outset I am asked what I have to do with it. I say I have every thing to do with it. Two very enormous changes have taken place in the country. One is that we have decided to shed our communal character and the other is that we have decided to impose upon ourselves the benefits of joint electorates. Can any honourable gentleman in this House deny the right of a Muslim to think in the same way as a large part of the Hindus think? After all we have to live with Hindus. In West Bengal they form 80 per cent and we have to live with them and think with them. Come with me to West Bengal. Pandit Maitra put the case of the opposition in Bengal very mildly when he said that there is serious opposition to this Bill

Shrimati Renuka Ray : There is equally and more serious support.

Mr. Naziruddin Ahmad: Come with me to West Bengal. I am not speaking on behalf of the orthodox section. With regard to that aspect of this legislation I have nothing to do. I have certain serious questions to raise before the House which have not been raised up till now. The objection in Bengal is so serious that if anybody undertakes a journey to ascertain public opinion— (*Interruption*) I mean intelligent and advanced public opinion—if anyone will go there, if anyone will make a journey from town to town in West Bengal, he will be faced with opposition to the Bill from the most intelligent section, the most enlightened section (*An honourable Member: Which the Honourable Member has not done*). I believe the interruption is not based upon a thorough consideration of the subject. I submit that it will be agreed that the members of the bar are not very conservative people.....

Shri L. Krishnaswami Bharathi : Most of them are orthodox and conservative.

Mr. Naziruddin Ahmad: They are not perhaps the orthodox section....

Shrimati Renuka Ray : What about the opinion of Mr. Atul Gupta recognised as one of the most eminent lawyers and chosen by Congress for the Partition Committee?

Shri Krishna Chandra Sharma: Does the lawyer line on precedents!

Mr. Naziruddin Ahmad : in spite of these interruptions I submit they are not the orthodox sections. You go to any bar library and you will find that this Bill is opposed tooth and nail.

Shri. L. Krishnaswami Bharathi : Because their occupation will be gone.

Mr. Naziruddin Ahmad: I do not agree that you eliminate the profession of

the bar by this Bill. You are introducing complications which you can not think of. On the other hand, I submit that the lawyers in a different capacity, in a professional capacity, will thank this House for introducing this controversial measure. Four judges of the Calcutta High Court, four advanced Hindu judges of the Calcutta High Court—one of whom now adorns the Federal Court Mr. B. K. Mookerji have said—that the law is already well settled, the law is well known. The law may be different here and there but that is due to various reasons into which I need not now go. The law is well known.

Shri A. Karunakara Menon : If the law is so settled why Law reports every week?

Mr. Naziruddin Ahmad : It is because I feel that my honourable friend does not realise the subtleties which underlie the law. In fact precedents are necessary. You cannot cover any possible case in anticipation by legislation. So precedents are necessary. They illuminate difficulties and they are helpful in deciding cases in future. The moment mankind gives up precedents, specially in the domain of law, they will cease to be intelligent animals. That is why I submit that lawyers who are not orthodox people are opposed to this piece of legislation, not because it will deprive them of their food...

Shrimati Renuka Ray: What happens when limited estate for women goes out in regard to litigation in Bengal?

Mr. Naziruddin Ahmad : I only hope that my honourable sister Shrimati Renuka Ray did represent the ladies of Bengal. (*An Honourable Member* : 'She does.')

She is only one star in the whole of West Bengal. I will cite at least a dozen stars in opposition who are equally well known as Shrimati Renuka Ray. She is only one guiding star leading the case of the Hindus. ...

Shri R. K. Sidhva (C. P. and Berar: General): The only star.

Shrimati Renuka Ray : There are hundreds of women who have gone to Noakhali and other places. There are many guiding stars in Bengal: these women social workers are all leading stars, -but they all support the Hindu Code.

Mr. Naziruddin Ahmad : I submit that my honourable sister has not the experience of litigation. He has not lived in the law. If he had lived it he would have seen the enormous possibilities. . . . Honourable Members : Say ' she '.

Mr. Naziruddin Ahmad:... for a good thriving business. There is no difference between he and she. According to the latest standards ' he ' includes ' she '

I submit ladies should no longer be called " she ", but they should be called " he ".

The lawyers are against this measure. Their family system will be seriously disturbed. They are very much averse to the Bill. (*An honourable*

Member. ' Are they afraid about their profession?') No, they will get more cases. I assure the house on behalf of the lawyers to which profession I have the honour to belong that for their personal interests they should all welcome it. (*Shri L. Krishnaswami Bharatili:* You are mistaken). I am not mistaken, I have lived in the law much longer than my honourable friend has done. I have taken part in litigation. The divorce provisions will introduce endless litigation and will lead to endless complications and endless difficulties for many families and more misery for women than men.

Coming straight to a very important point, I have to submit before the House a very serious state of affairs in connection with this Bill.

The bill was lastly rushed through the Legislature on the 9th of April last. We were asked by our fair sisters not to oppose the Bill at that stage; it was considered to be so important that no detailed attention need be paid to it—it should be passed. So, at the last hour of the last day we agreed to allow it to be considered. I raised my feeble objection from the Hindu point of view. Am I raising any objection from the Muslim point of view? Certainly not. So, my declaration that the objection was from the Hindu point of view should not have elicited any surprise or any laughter. It is from the Hindu point of view that I am speaking. My learned sister the other day asked me, " Why is it that you are denying to your Hindu sisters rights which you are giving to your own sisters "? That is a very cardinal question. May I reply? My reply is this, that you cannot give the same kind of food to different kinds of persons. You have got to judge the position of a Hindu woman as the Hindu law conceives of it. You have got to consider the position of a Muslim woman as the Muslim law conceives it. We are not here to question the wisdom of one system or the other. I find there are two kinds of Members here: some vegetarians and some non-vegetarians. Would you give meat food to a vegetarian and if anybody gives vegetable food to a vegetarian would you accuse him of partiality? (*An honourable Member :* ' Is it logic? Very strange logic.'). The argument is as logical as the question put to me by my sister Shirimati Renuka Ray—it was not logical. You cannot give the same kind of food to two different kinds of persons ; they were indeed born and bred differently.

The Bill was rushed through the House on the 9th of April. The Honourable the Law Minister has given us a revealing passage in the Report of the Select Committee. He has made a plain admission that the Bill had not received any consideration on its merits before it was taken to the Select Committee. That was very wonderful statement to make. Originally the Bill was supposed to be well-drafted—a good Bill—it passed through the Legislature on the 9th of April and was taken to the Select committee and then comes the realisation that it had not received technical or departmental

consideration. Why is it, may I ask, that although it had not received technical or serious departmental consideration at the hands of the Law Ministry, it was rushed through at that stage? (*An honourable Member*: ' We were very near 1st April '). That may be ; it was very near the 1st of April and that probably has something to do with the rush. Probably no serious business was meant, some sentimental piece of literature had to be passed through in order to satisfy our fair sisters. The Bill is driven more by " lady sentiment " than by a consideration of the necessities of the case. The Department then undertook a most unprecedented task. They came to the conclusion that the Bill was not properly drafted, that it had some defects, that it had to be recast. The Bill was composed of several individual chapters with separate numbering and separate definitions, entirely separate from each other. The Legislative Department thought that this was a blemish and that the Bill should be recast with continuous numbering and the whole blended into one complete whole.

I submit that the moment the Legislative Department came to that conclusion, then was the time to withdraw the Bill and to frame a new Bill which the Ministry was able to accept; and present that as a new Bill. Instead of that the department went through a process of legislative drafting with which I was never familiar. The whole constitutional history of India and abroad will never offer an example of a Departmental Bill being prepared after a Bill is presented and after sending it to the Select Committee. Shri Ramnarayan Singh yesterday asked as to what authority the Drafting Committee had to make a new Bill altogether. (*An honourable Member*: ' It is not a new Bill. ') I shall be in the unfortunate position of being able to show that very substantial changes have been made. Although the Honourable the Law Minister yesterday tried to avoid answering the question, still he had to admit in the end that he did not make any changes, that it was the Select Committee that made the changes. I am in a position to demonstrate before the House that the changes were very serious, very radical, and not unsubstantial changes.

Shri L. Krishnaswami Bharathi : Sir, on a point of order. If the honourable member wants to base his argument for re-committing the bill to the Select committee on the fact that it was some other Bill that was considered and not the Bill sent to it, that point has been covered by Mr. Speaker's ruling ; he need not emphasise on that point. If he has other reasons, he is welcome to do so; he is speaking on his amendment for re-committing the Bill to the Select Committee. But if he stresses his argument, namely, that the Bill considered by the Select Committee was not the bill sent to it by this House, then that has been covered by the ruling of the Chair which declared that it is the same Bill.

Shri T. T. Krishnamachari (Madras: General): That might be an argument for rejecting consideration.

Shri L. Krishnaswami Bharathi: If that is so, then that point has been thrashed out so much that if he were to argue it again it will merely be taking the time of the House. That aspect has been so thrashed out and arguments have been advanced. He is merely repeating them. I would submit to you, Sir, that we can hear any new arguments but we are not prepared to hear the same arguments being repeated by him.

Pandit Lakshmi Kanta Maitra: May I put in a few words in connection with the point of order raised by my friend Mr. Bharathi? He said that the honourable member Mr. Naziruddin Ahmad in his amendment for re-committal to the Select Committee had been raising the grounds which had been covered by Mr. Speaker's ruling. I do emphatically maintain and the House would also agree that every honourable member is entitled, without disrespecting the ruling of the Chair to give the reasons which lead him to recommend the Bill for recommitment to the Select Committee. There is no point of order as such involved in it. It is a member's legitimate right to place all arguments which he can for making a motion for recommitment to Select Committee.

Mr. Chairman : I think there is no point of order in this, because he is speaking for his amendment that the Bill be re-circulated for purposes of obtaining further opinion thereon and he is just advancing arguments how the Bill has changed ; how the original Bill has been altered in the Select Committee.

Mr. Naziruddin Ahmad: I submit, the real difficulty of my honourable friend is not there. I believe that an intelligent man as he is, Mr. Bharathi of all persons, is well aware of the real difficulties of the situation. That is why, I submit, he most intelligently wants to intercept me by Mr. Speaker's ruling. I must make a declaration at once here that of all persons in the House I have the greatest respect for the decision of the Chair.

Pandit Lakshmi Kanta Maitra: Why do you go into that ?

Mr. Naziruddin Ahmad: I am merely saying that I accept the decision of the chair. I am not going into that.

Pandit Thakur Das Bhargava (East Punjab : General) : You must go into that. Why not ?

Mr. Naziruddin Ahmad: But what was the ruling ? The ruling was that the consideration of the Bill was not out of order ; in fact, the ruling was that the members of the Select Committee had the old Bill and the Departmental Bill and they must have taken the whole thing into consideration and on that basis the technical objection which I had raised that the Departmental Bill above

was taken into consideration and not the original Bill was well founded. That is the effect of the ruling, and that is the ruling. My present purpose would be now to show that although the members of the Select Committee had the original Bill before them, although they had the Departmental Bill before them, although they had both, although they had the opportunity of comparing the two and seeing what glaring interpolations were made in the Departmental Bill, they did not do so. They discharged their duties, I should say with respect in consideration of the importance of the subject, in a somewhat hasty manner and imperfectly and rattier perfunctorily. This was the point of view that I was emphasizing.

An Honourable Member : You are inciting the Law Minister to violence!

The Honourable Dr. B. R. Ambedkar : I would not do any such thing, because I have plenty of arguments to meet Mr. Ahmad.

Mr. Naziruddin Ahmad: I submit the Honourable the Law Member is fully conscious of the situation, I have a little suspicion, that he knows by this time without any doubt what serious changes have been made in the Departmental Bill.

The Honourable Dr. B. R. Ambedkar: I do not know. I am waiting to hear, though.

Mr. Naziruddin Ahmad : The Honourable the Law Member said, " There have been certain serious changes, but I did nothing. It is the Select Committee that did so. The Departmental Committee did not make any changes." In fact yesterday I put a pointed question which he kindly answered, namely, whether the Departmental Committee that was set up was instructed not to make any substantial changes. That was due to the fact that I find in the report of the Select Committee a definite declaration by the majority of the Select Committee : " This revised draft does not make any substantial changes in the body of the original Bill. " It was this declaration which I understand was also given to the Select Committee by him that no substantial changes have been made; it was on this basis that, although they had the original Bill with them, they did not look very carefully and compare them with a view to finding out whether any substantial changes have been made.

Shrimati Renuka Ray : On a point of order, Mr. Chairman. Are matters which happened in the Select Committee, are those details allowed to be brought up in this manner?

Mr. Naziruddin Ahmad: With regard to this point of order, I have already to submit that. . . .

Shrimati Renuka Ray : It is a point of order which I would like you. Sir, to decide.

Mr. Chairman : I think there is no point of order. It is only Mr. Naziruddin Ahmad's inference that the Select Committee did or did not do such and such a thing. I think the honourable member will not cast any aspersions on either the Select Committee or the members of the Select Committee. He may advance his arguments.

Pandit Thakur Das Bhargava : The manner in which the Select Committee behaved is certainly open to the criticism of the House.

Mr. Naziruddin Ahmad: I submit...

Pandit Lakshmi Kanta Maitra: You are right, Mr. Chairman. Without casting aspersions he may advance arguments.

Shrimati Renuka Ray: But he is casting aspersions.

Mr. Chairman: They are at best inferences.

Mr. Naziruddin Ahmad: Sir, my inference is that members of the Select Committee were definitely assured by the Honourable Minister.....

Shrimati Renuka Ray : I object to this Sir. This is casting aspersions. These inferences are casting aspersions.

Mr. Chairman : Every honourable member is at liberty to draw his own inference.

Mr. Naziruddin Ahmad : I submit. Sir, it can be contradicted at once by any member of the Select Committee.

Shri L. Krishnaswami Bharathi : No; certainly we cannot contradict. But since you are inviting a contradiction, I as a member of the Select Committee, do contradict. I say that we went through the whole thing and we were satisfied that

Mr. Naziruddin Ahmad: You are making a statement

Shri L. Krishnaswami Bharathi: You wanted a contradiction. And I contradict.

Shrimati Renuka Ray: Mr. Chairman, I would like to say that because inferences are made and aspersions are cast, the members of the Select Committee are put in a very awkward position, because then we have to bring forward all that happened in the Select Committee, which we are not supposed to do here ?

Mr. Chairman: Order, order. I would request the honourable member not to make any aspersions against the members of the Select Committee; he may address arguments as to how the Bill has been changed.

Mr. Naziruddin Ahmad : I would not willingly make or cast any aspersions on any honourable member unless it is involved in the very exposition of the point. If anything was badly done which affects the fate of 30 crores of people and if any mistake or slip has been done by members of the Select Committee then I should respectfully but frankly criticise that. This amount of

privilege should be given to a member of the House. I should stand corrected if I am wrong. I should not cast any aspersions merely for casting aspersions, but I will confine myself to pointing out certain serious changes and errors of procedure affecting the merits of the Bill and the discussion of the same may necessarily involve me in a criticism of the members of the Select Committee. Why should the members of the select Committee be afraid of a discussion ?

Shrimati Renuka Ray : We are not afraid of discussion. Then we must be given the right of speaking on what happened in the Select Committee.

Mr. Naziruddin Ahmad: The so-called sanctity of the Select Committee has been broken in this connection so many times.

Shri Mahavir Tyagi (U. P. : General) : There is no sanctity about it. We can discuss it. Shri L. Krishnaswami Bharathi : We are prepared to discuss it.

Shri MihirLal Chattopadhyay : (West Bengal : General) : Should members be allowed to carry on conversation like this. Sir ?

Mr. Chairman: Order, order. I have been seeing it happening. I hope honourable members will kindly allow the speaker to proceed with his argument.

Mr. Naziruddin Ahmad: The Honourable Deputy Speaker the other day asked Dr. Ambedkar to explain why certain things took place. Dr. Ambedkar said that it was due to the influence of his enemies getting the better of his friends, they combined together and did it. Is it not giving out the so-called secrets of the Select Committee ?

The Honourable Dr. B. R. Ambedkar : I did not want to interrupt the honourable member at all. But now I think it is my duty to draw your attention and also the attention of the speaker that his motion is that because certain changes have been made in the Bill, it ought to be recirculated. I think what is most germane to that motion is that he should straightaway without any kind of preliminary discussion proceed to point out what changes have been made. I was waiting to know that from him.

Mr. Naziruddin Ahmad: That is what I was going to do when side-issues were raised.

Pandit Thakur Das Bhargava : On a point of order; I beg to submit that this question affects the privileges of the Members of the House. The question at issue is : are the members of the House not entitled to criticise the wrong behaviour or the wrong conduct of the members of the Select Committee in regard to procedure? Supposing a Bill is placed before a Select Committee and that the Bill considered by the Select Committee was not the one referred to, another Bill is substituted in its place. Are not the Members entitled' to say them by the House ? You may give a ruling on the point whether the members of the House cannot criticise this conduct of the Select Committee ?

Whatever has happened in the Select Committee may not be allowed to be divulged. But the manner in which the proceedings were conducted is open to criticism, otherwise it will mean that the members of the House have no sort of control on a Bill. If a bill is introduced in the House it becomes the property of the House and every Member has a right to point out the irregularities in the Select Committee.

Mr. Chairman : This is not a point of order. The speaker will go on.

The Honourable Shri K. Santhanam: (Minister of State for Railways and Transport). May I submit that while the House is entitled to criticise the Select Committee and even censure it, it is not entitled to say that the Bill before it is not the Bill that was referred to it. It is not open to the House to say that this is not the Bill referred to the Select Committee. The House may condemn the Select Committee if it thinks that the Select Committee has not done its duty. Whenever a Bill is presented to us and is under consideration it is not open to us to say that this is not the Bill that was presented to it.

Mr. Naziruddin Ahmad: I submit that I was only going to condemn the Select Committee and nothing more.

Mr. Chairman: The honourable member will be perfectly right if he criticises the Bill as it has emerged from the Select Committee and points out the changes made. He will confine his remarks to the changes that have been made in the Bill.

Mr. Naziruddin Ahmad : I am going to submit to the House that some changes have been made, some serious changes have been made.

The Honourable Dr. B. R. Ambedkar: Point them out. I am awaiting to know the changes made. "The honourable member may take his own time, but let him tell us what the changes are.

Mr. Naziruddin Ahmad: I will proceed in my own way.

The Honourable Dr. B. R. Ambedkar : He cannot go on in this manner.

Mr. Naziruddin Ahmad: I submit that the original Bill was introduced by Mr. Jogendra Nath Mandal. It bears the printing date 1st, August 1946. This was the Bill which was sent to the Select Committee. A Bill printed on 16th August 1948 is the Bill that came out of the Select Committee with the report.

The Honourable Dr. B. R. Ambedkar : What is the point on that ?

Mr. Naziruddin Ahmad : I am coming to that. There are serious discrepancies between these two Bills.

The Honourable Dr. B. R. Ambedkar: That is what we are waiting to know.

Mr. Naziruddin Ahmad : If this is accepted I will proceed to the vital points. There are serious discrepancies between the original Bill and the Bill that has been appended to the report of the Select Committee, (*interruptions*) This is not the best way of quickening my pace. I submit that in between these two

Bills, a very interesting document came in. It is a departmental draft which was printed on 17th July, 1948. It is this draft which came in between the two. All the points of order raised and argued were about this departmental draft. Even in the present discussion, if I understood the Honourable the Minister of Law rightly, he mentioned nothing about this departmental Bill, but said that all the changes were made by the Select Committee and not by him. I am referring to the Bill dated 17th July, 1948.

Shri Mahavir Tyagi: That was before the date of the Select Committee meeting.

Mr. Naziruddin Ahmad: I am grateful to my friend Mr. Tyagi for pointing out that the date of printing, viz., 17th July, 1948, was before the Select Committee was first called to meet. I submit that this Bill.....

The Honourable Dr. B. R. Ambedkar: I would like to curtail this argument of my honourable friend by saying that it is bound to be so. The re-draft was sent one month before the meeting of the Select Committee.

Mr. Naziruddin Ahmad: That is the point I was mentioning. I am grateful for the admission. This draft was complete before the Select Committee met. I should like to state at this stage that the House was not informed about it. The authority of the House was not taken to completely change the original Bill.

Shri Mahavir Tyagi: Is the middle one exactly the same as is appended to the report ?

Mr. Naziruddin Ahmad: There have been some changes. The changes made by the select Committee were slight, but serious changes were made by the Department which the Select Committee never knew.

Shrimati G. Durgabai: It is the Select Committee that has introduced the changes and not the Department.

Mr. Naziruddin Ahmad : I submit that the most important thing is that they never made a detailed examination of the Departmental draft. In fact my contention is that—1 would sit down if my honourable friend Shri Santhanam can quote a single example in the whole legislative history of India or in other countries for this—a Bill that has been sent to a Select Committee has been substituted by another completely re-casting the whole timing and put along with it.

The Honourable Shri K. Santhanam : I have been on many Select Committees and in many cases the original Bill has been completely re-drafted by the Select Committee.

Mr. Naziruddin Ahmad: That is another matter.

Mr. Chairman : May I point out to the honourable member that Mr. Speaker has given a decision that it is the original Bill that was considered by the Select Committee along with the draft given to it by the Honourable the

Law Minister ? In view of that decision, the honourable member may confine his remarks to the point as to how the original Bill has undergone a change in the Select Committee. All the other remarks about what happened in the Select Committee are beyond the purview of the honourable member.

Mr. Naziruddin Ahmad: My point is that, although the Select

Committee must be deemed to have considered the original Bill and the departmental draft and to have come to this conclusion, that was done most perfunctorily and imperfectly. My point is this, that although the Select Committee considered or must be deemed to have considered the original Bill and the departmental draft and came to this conclusion and although that is so, my point is that it was necessarily done most perfunctorily and most imperfectly. They must have been, I submit, dominated by the serious changes introduced into the departmental Bill and they must have been completely under the hypnotic influence of a revised draft, a convenient readymade thing, which was placed in their hands. It must have made a tremendous psychological impression on the Members of the Select Committee, so that the Select Committee, although they had the right, largely depended upon the departmental draft and this affects the merits though not the legality of the final Bill.

My point is that any Select Committee has the right to make enormous changes, but it has never happened that a new Bill, completely changed, was placed at the hands of the Select Committee and then they would begin consideration of the new Bill. Although, technically, they had also the original Bill, still they proceeded clause by clause with the new Bill. That was a matter of merit. I submit, that the introduction of this departmental Bill has created considerable amount of prejudice to a fair and impartial consideration of the Bill. I submit that the clauses of the original Bill should have been begun one by one and changes should have been made gradually on the body of the original Bill. Instead of that it seems to have necessarily followed that the departmental Bill was taken up, although there was in them marginal references to the clauses of the original Bill. Still, I beg to submit without any disrespect to the members of the Select Committee, it was impossible for any member to really see readily what enormous changes had been effected in the departmental Bill and it is this, I submit, which has affected the merits of the final Bill. I never suggest that the Members of the Select Committee had no right to make any changes or to adopt the departmental Bill or to proceed with the original Bill. I submit that the work was, speaking again with respect, necessarily done perfunctorily and considerable responsibility in the work of the Select Committee must rest upon the departmental draft. On a consideration of the departmental draft, therefore, the merits of the present

Bill should be considered.

Shri L. Krishnaswami Bharathi: Let us see all the points of difference.

Mr. Naziruddin Ahmad : I submit that the entire legislation began with a blunder and it proceeds from blunder to blunder until we come to a capital blunder, namely the present Bill. I submit that the mistake first arose in the year 1937. The mistake arose there and I shall show at once that one mistake led to another mistake and that mistake led to other mistakes and all these mistakes led the Select Committee and then ultimately (*Interruption*) I ask Shri Krishnaswami Bharathi in all seriousness, should I be disturbed like this?

Mr. Chairman: If the honourable member addresses the Chair, I think the disturbance will be much less.

Mr. Naziruddin Ahmad: Sir, I submit, you will be pleased to consider that in the year 1937, a Bill was passed into law and that is the Hindu Married Women's Right to Property Act, 1937. That, I submit, was a hasty legislation. It contained within itself ill-digested, little understood law that has led to all this trouble. In fact the author of the Bill was Dr. Deshmukh. So, Dr. Deshmukh— I am happy to find it is not our present Dr. Deshmukh— unconcentiously with the *bona-fide* belief of doing good to Hindu society, introduced that Bill. The effect of the Bill was to introduce some change in the law of Succession in the compact series. According to Hindu Law, as I have understood it, when a man dies, his heirs are son, grandson and great, grandson. In the presence of the son the grandson by a pro-deceased son inherits— the grandson represents his deceased father and takes his father's share. So in this way the son, grandson and the great-grandson in three generations inherit the property. Dr. Deshmukh was enthused with the idea that the widow must be given a definite status and a definite right. So he made the widow of the propositus a share-holder, and not only the widow of the propositus, but the widow of a deceased son, the widow of the deceased grandson and the widow of a deceased great-grandson. They were also included within the ambit of the shareholders. That, I submit was most ill-considered, although the author was imbued with the highest sense of patriotism and welfare of the community I submit, that this was then.....

The Honourable Shri K. Santhanam : Would my honourable friend like me to inform him that this Bill was actually accepted by the late Sir N. N. Sircar, who was the greatest authority on Hindu Law ?

Mr. Naziruddin Ahmad: I am in a position to show, although not only he, but there was a time when I also accepted it. (*Interruption*). I beg to submit that I am in possession of the House.

Mr. Chairman : The honourable member is going into the history of the amendments to Hindu Law.

Mr. Naziruddin Ahmad: I submit, that the Hindu Married Women's Right to Property Act was the first mistake and I shall show that this contained within it seeds of other blunders culminating in the present Bill.

Shrimati G. Durgabai: That was a serious reflection of the legislature then existing.

Mr. Naziruddin Ahmad : I submit that the mistake was admitted by that legislature itself and I can quote passages that that legislature admitted that that was a mistake. (*Interruptions*). Mr. Chairman: Order, order.

Mr. Naziruddin Ahmad : I submit, I should show how the mistake came about. In fact in providing for the widow of the propositus of the deceased son, grandson and of the great-grandson, the position of the daughter became absolutely uncertain. Nobody knew what the position of the daughter was at that lime under this Act.

The Honourable Dr. B. R. Ambedkar : An undertaking was taken from my friend Dr. Deshmukh by Sir N. N. Sircar that the Government will support the measure only if he agreed to drop the word daughter and he promised that he would drop the word ' daughter.'

Mr. Naziruddin Ahmad : I am as much familiar with the history of that law as the Honourable Dr. Ambedkar.

Mr. Chairman: Is the honourable member going to take more time?

Mr. Naziruddin Ahmad: Yes, Sir.

Mr. Chairman : In that case, he may resume his speech later and we may now adjourn.

The Assembly then adjourned till a Quarter to Eleven of the Clock on Thursday, the 3rd March, 1949.

HINDU CODE—*contd.*

Mr. Deputy Speaker : I have to inform honourable Members that the following dates have been fixed for receiving nominations and holding elections, if necessary, in connection with the following Committees, namely:—

	Date for	Date for nomination	election
1. All India Council for Technical Education)			
2. Committee to review the working of the		2-4-49	5-4-49
Railway Convention.			

The nomination for these Committees will be received in the Notice Office upto 12 Noon on the date mentioned for the purpose. The elections, which will be conducted by means of the single transferable vote, will be held in the Assistant Secretary's room (No. 21) in the Council House between the hours 10-30 a.m. and 1-00 p.m.

Mr. Deputy Speaker: The House will now proceed with the further consideration of the following motion moved by the Honourable Dr. B. R. Ambedkar on the 31st August, 1948, namely:—

" That the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee, -be taken into consideration. "

Pandit Lakshmi Kanta Maitra (West Bengal: General): Sir, before you call upon my honourable friend Mr. Naziruddin Ahmad to continue his speech, I feel constrained to bring to your notice once again the irregular manner in which this motion is being brought to this House from time to time. I think very few of us knew up till yesterday that this Bill was coming up again for consideration. As a matter of fact the House was under the impression that so heavy was the pressure of urgent government business that no day could be found for it ; in fact several Members of this Parliament who came over here to participate in the deliberations on this subject went back under the impression that this matter was not going to be taken up again in this session. I can particularly mention an honourable Member, Pandit Govind Malaviya, who came over here and who wanted to speak for a very long period of time, and when he was assured that the matter was not coming up.....

Several Honourable Members: Assured by whom ?

Pandit Lakshmi Kanta Maitra: Most people knew. It was not a case of ordinary business of this House. No single Member of Government stands, up and says. " I give you an assurance that this will be discussed ". Nothing like that. Everybody got the impression from Party talks and elsewhere that the matter was not going to come up at any rate in this session. (*Interruption*). That being so, if it is taken up now it will be showing very scant courtesy to the House. I feel this Bill is of such a controversial nature that I do not think that you should allow this Bill to be proceeded with in the way in which it is being done repeatedly in its different stages. Sir, it is for you to consider the point of view which I am placing before the House. The House is attenuated, and because the whole Budget discussion was over most Members were under that impression—and quite reasonably. When they had no idea of the change suddenly to spring a surprise by bringing in a motion like this at this late stage, of the session, is, I think, hardly fair. An Honourable Member: We want your decision, Sir. Mr. Deputy Speaker: But there is no point of order here.

Shri Mahavir Tyagi (U.P. : General) : But then I want information as to how long the discussions are proposed to be held. There are friends in my Province who had requested me to inform them when the Hindu Code Bill comes for consideration. I could not inform them because, I did not know whether the Bill will be considered only for today or for tomorrow or any other

day or till the end of the session. So, Sir, will you now be in a position to tell the House how long we are going to discuss this Bill so that if there is time for them to come, I might inform them.

Mr. Deputy Speaker: I am in full sympathy with what Pandit Maitra has said, but I do not find any way out of it. As far as I am aware—I have been here for a number of years in this Assembly—when any matter of such importance where a number of people are interested, comes up, the agenda for the next week would be at least read out on the previous Friday. I have been accustomed to some procedure. Evidently it was not expected that there would be time for this Bill, but it was put in when one day was extended and time found for today and tomorrow. That is why previous notice could not have been given. I believe the honourable Members would try to take as good advantage of it as possible by sending telegrams, etc. and get other Members. Therefore, so far as Mr. Tyagi is concerned, if he thinks that other Members outside are interested in the proceedings, I may say that the proceedings will be broadcast, this evening or tomorrow morning and then they will come to know of it.

An Honourable Member: How can they come tomorrow? Mr. Deputy Speaker: They can come by aeroplane! It is not for the Chair to decide how they can come. All that I can say is that on an important matter of this nature, certainly Government must have given proper notice; it is not as if Government could lose sight of this important matter. The general public is interested, a large number of the Members from the Provinces and States are not here. Even if they were here, it cannot be expected that everybody should be expected to read all the books and carry all the information for use at a moment's notice. These are the disadvantages but I am sure the honourable Members will try to do as best as they can of the opportunity. Nobody can guarantee how long the discussion will go—it may conclude this evening or go on till tomorrow.

Shri T. A. RamaUngam Chettiar (Madras : General): What is the programme for this Bill?

Mr. Deputy Speaker: It is entirely in the hands of the House. I do not think we can have a cut-and-dried programme. It is for the House to see whether it is necessary to continue discussion, and if there is sufficient debate to close it as early as possible.

Shri Mahavir Tyagi: Sir, I will put the question the other way round. May I know if there is any other Government Bill for the rest of the Session or this Bill is the only work before us, so that I can make out how long this Bill will go?

Mr. Deputy Speaker: As the honourable Member will see from the Order

Paper, there is so much other work. This no doubt happens to be the first Bill for the day but tomorrow other Bills will come which are on the list. We need not spend any more time on this question. Mr. Naziruddin Ahmad.

Shri B. Das (Orissa: General): Will you please fix a time-limit for speeches?

Mr. Deputy Speaker : I cannot fix any time-limit on a controversial matter of this kind. I shall try, so long as I am in the Chair—certainly the Speaker will do it better—to see that repetition is avoided. That is all that I can do, and I shall to the best of my ability, avoid all irrelevant matters being brought in Subject to this. I would like to give as much freedom as possible.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Mr. Deputy Speaker, it is a strange irony of fate that apart from the interrupted nature of the debates on this Bill, it has been decided by Government that the chequered career, of this Bill and the intermittent debate should, after an interval be seriously resumed on the All-Fools' Day. On the last occasion, when I pointed out that the Bill was sent to the Select Committee in a great hurry on the 9th of April last, some honourable member reminded us that 9th April was very near the 1st of April. Somehow or other this Bill is associated with the 1st of April. On this day, we are accustomed from time immemorial to deal with each other in a playful spirit. We issue bogus invitations, bogus marriages are announced and various other bogus things are done.

Shrimati Ammu Swaminadhan (Madras : General) : Sir, has this got anything to do with the Hindu Code ? Just now you said that no irrelevant matter will be allowed. Has all-fools' day anything to do with the Hindu Code ?

Mr. Deputy Speaker: I have not heard the honourable Member sufficiently to come to a conclusion as to whether it is irrelevant or not.

Mr. Naziruddin Ahmad: Sir, I was merely emphasizing the unsatisfactory manner in which the Bill is being brought up from time to time. A Bill of this importance and magnitude requires that it should be sat over continuously by honourable Members.

Pandit Lakshmi Kanta Maitra: Spat over ?

Mr. Naziruddin, Ahmad : Sat over. Pandit Maitra thought " spat over ". I did not mean that. I submit. Sir, a Bill of this magnitude requires that Members should sit over it continuously for a long time. The disadvantage of considering this matter at long intervals is that Members lose the thread of argument and it is very difficult for them to appreciate what has already been said so as to connect with what is said on each occasion. I submit, therefore, that this is not dealing seriously with the Bill or with the House.

On the last occasion when I was dealing with the history of this important legislation, I pointed out that the first mistake was committed in 1937 with the

passage of the Hindu Married Women 's Rights to Property Act, 1937.

The mistake was to have rushed to the legislature and without sufficient consideration to have passed a Bill of that complicated nature. In fact, an honourable Member of that House at that time, Mr. Deshmukh, had a happy idea and without giving sufficient consideration to the subject, he came to the House and the House in a generous mood passed the Bill. By that Act, certain women were given the right of direct inheritance along with the sons, grandsons and great-grand sons. They were given independent right. They were not merely Hindu women's rights, but absolute, transferable and inheritable rights. Soon after that, a distinguished lawyer from Bengal—Mr. Rishindranath Sircar—drew attention to certain difficulties which would arise in connection with the Act. Mr. Rishindranath Sircar is a distinguished lawyer and author of a text book on the Hindu Married Women's Right to Property Act, and connected Acts. He pointed out certain inherent difficulties which would arise in connection with the Bill, and in 1938, the Act had to be amended by Act, XVI of 1938. The trouble, however, did not cease there and difficulties arose afresh. A further difficulty arose by the Act as it was amended in 1938. By the Act even as amended, right was given to the widow of the deceased, the son's widow, grand-son's widow and the great-grandson's widow and considerable difficulties arose as to the position of the daughter. In fact, there was a great deal of controversy and Mr. Sircar again pointed out the difficulties of the situation created so far as the daughter was concerned. This question was agitated throughout the country, and we find about half a dozen Bills were submitted to the Legislative Assembly to clarify the position of the daughter, to give her also that right, along with the son, grandson, and the widows of the various persons. Those Bills were presented to the House and they were on the agenda. I believe experienced Members of this House, like Pandit Lakshmi Kanta Maitra will be able to recall the situation with which the Government was faced, when it had a large number of Bills before it—about six Bills. Sir Reginald Maxwell, the Home Member, at that time pointed out in the House that it was always a bad thing to rush legislation on social matters, without adequate consideration. And the difficulty was more and more increased as there were more and more legislations. He was, therefore, in full sympathy with the position taken by those members, and he agreed to have the matter examined properly, from every point of view, before legislation was undertaken. This led to the birth of the Rau Committee. That Committee prepared a Draft Bill and sent questionnaires to various people, and considered and analysed the answers and they prepared another Bill. But before proceeding any further with their work, they were met with an initial

difficulty. They found that there was another blunder in connection with the Acts of 1937 and 1938. They were of opinion that the Act of 1937, as it was amended by the Act of 1938 did not apply to agricultural land. The difficulty arose in this way that the first Act of 1937 was passed by the Legislative Assembly when agricultural land was a subject no longer cognizable by the Centre. Mr. Deputy Speaker: The House stands adjourned to 2-30 p.m. *The Assembly then adjourned for Lunch till Half-Past Two of the Clock,*

The Assembly re-assembled after Lunch at Half-Past Two of the Clock, Mr. Speaker (The Honourable Mr. G. V. Mavalankar) in the Chair.

Sreematty Annie Mascarene (Travancore State) : I wish to raise a point of order. May I know whether it is the duty of a Member of this House to attend the session of the legislature throughout?

Mr. Speaker: It is hardly a point of order. A member need not attend any discussion if he does not like to do so. But I will make one observation. If a member makes a speech in support of or in opposition to a Bill, it is his duty to remain present in the House to hear the reply.

Sreematty Annie Mascarene : If he is absent for a few days and then comes back and complains that he is not aware of the agenda of the House, can that be excused. Sir ?

Mr. Speaker : He will be judged by his statement before the House.

Mr. Naziruddin Ahmad : Before we parted for Lunch today I was dealing with the first part of the history of this legislation. The Act of 1937 and the amending Act of 1938 led to difficulties with regard to the daughter and a large number of Bills were brought forward to clarify her position. At that stage the government agreed to have the matter examined and appointed the Rau Committee. The Rau Committee soon found that the legislature had no jurisdiction to pass the Acts so far as agricultural land was concerned. The point arose in this way : Agricultural land was in the Legislative List of the Centre under the previous constitution. The Bill was passed by the Lower House in March 1937 when it was functioning under the old Constitution. The Upper House passed it sometime in April when the new constitution of 1935 had come into force. So, when the Bill was passed by the Upper House, it had no jurisdiction to legislate for agricultural land. The amending Act of 1938 was passed when none of the Houses had this jurisdiction. These were capital blunders committed by the Legislature of the time. The Rau Committee referred the matter for opinion to the Federal court. The Federal court gave a ruling that the House had.....

The Honourable Dr. B. R. Ambedkar (Minister of Law): The history is wholly wrong.

Shri L. Krishnaswami Bharathi (Madras : General) : How could the Rau

Committee refer to the Federal Court ?

Mr. Naziruddin Ahmad: It is wholly wrong ?

The Honourable Dr. B. R. Ambedkar: Yes, wholly wrong.

Mr. Naziruddin Ahmad: In what respect ?

The Honourable Dr. B. R. Ambedkar : I will deal with it in my reply.

Pandit Lakshmi Kanta Maitra: He is substantially correct.

Mr. Naziruddin Ahmad : The Rau Committee reported to Government and the Governor General referred the matter to the Federal Court. I was wrong only in a minute technical detail. I repeat: The Rau Committee referred the matter to the Federal Court through the appropriate channel—the Governor General. Is that wrong ? I was absolutely right and never wholly wrong. (*Interruption*).

Mr. Speaker: The honourable Member may proceed.

Mr. Naziruddin Ahmad : The point was thus referred by the Rau Committee to the Federal Court and they gave the ruling that the Legislature acted *ultra vires* so far as agricultural land was concerned. That was a capital blunder which was revealed at the time. As soon as the ruling of the Federal Court was known I come upon the scene. My connection with the Hindu Code is not casual or recent. I am in a position to show to the House that I took legal steps in connection with this legislation as far back as 1941. I was then a Member of the Bengal Legislature and I submitted a Bill even before the first report of the Rau Committee was out. As soon as the judgement of the Federal Court was known I introduced a Bill in the Bengal Legislature to apply the Act to Bengal so far as agricultural land was concerned. That was the first attempted legislation of the time in this connection in India.

Mr. Tajarnul Husain (Bihar: Muslim): May I know from my honourable friend if at that time he was in favour of the Hindu Code Bill from what time did he change his mind ?

Mr. Naziruddin Ahmad : The Hindu Code Bill was not even born at the time. At that time, like many others—many more famous men as far even as the topic was concerned, it turned out later that I had taken a wrong step. In fact I wanted to extend the Act to agricultural land in Bengal. That was the object of the Bill which I submitted to the Bengal Legislature. It was circulated for opinion throughout Bengal and a large body of public opinion was in favour of the Bill. Everybody at the time like me thought that that Bill was right.

Mr. Tajarnul Husain : Sir, the honourable Member has not given his reasons why he changed his mind.

Mr. Speaker : That is not relevant at all. He may change his mind any number of times.

Mr. Naziruddin Ahmad : The honourable Member should try to wait. The House will be pleased to note that the Bill was submitted by me in 1941, 14th July, and that a very large section of Hindu public opinion in Bengal was then in favour of it. Then the Bill was placed on the agenda for a Select Committee. I have got a copy of the agenda paper with me, dated 25th September 1942. I was then in a position to get it passed by the Bengal Legislature where the Hindu Muslim Coalition party had a large majority. The Party by a majority had decided in favour of the Bill and it was going to be sent to a Select Committee. By that time, however, Hindu opinion had been sufficiently crystallised against the Bill. I was told that serious difficulties would arise if the Bill was passed. Many people, including myself, then realised that if the Bill was passed, the position of daughters and others would lead to chaos. In the meantime the Rau Committee report had been published and the Bill drafted by them was before the country. A large number of meetings were held in connection with it in 1941 and 1942. There was a meeting held in my native place of Burdwan and many similar meetings were held throughout Bengal condemning the main Bill. Though I had the requisite majority in favour of my Bill, I did not proceed with it as it was a Matter affecting the Hindu community alone and it was opposed by them. I felt that it was no good passing a measure by sheer majority of persons who were not affected by it. I was never in favour of the Hindu Code Bill, though I was for a time in favour of my own Bill. This will I hope satisfy my honourable friend Mr. Tajamul Husain. I asked the Hindu members to let me know what to do and they were against my Bill and so the Bill was dropped. I am not afraid in the least to make this admission that everybody thought and even the Rau Committee thought that a Bill foreshadowed by my Bill should be introduced to extend the Act of 1937 in every local legislature to Agricultural land. I also fell in line, but then I found this volume of Hindu opinion against my Bill. No province has ever applied the Act of 1937 to agricultural land. Thence forward. Sir, a large number of meetings have been held in Bengal and the Rau Committee Bill has been uniformly condemned.

Now with regard to this Rau Committee's report, they prepared a Bill, that is the " Hindu Code Bill—Part I intestate Succession " and that was introduced in the Central Legislative Assembly and that was sent to a very strong joint Select Committee of both. Chambers of the Central Legislature. I have got a report of the Select Committee with me. It was very strongly supported on one side, but equally strongly opposed on the other, and this Bill as reported by the Select Committee came to the Legislature once again, the Rau Committee had in 1941 reported that the Hindu Code Bill should be taken up by compartments. It is a very important joint and I wish to draw

special attention to the fact that the Rau Committee actually reported that the Hindu law should be taken up by compartments, succession marriage, guardianship and others. They said at page 23 of their report of 1941.

" The recommendation which we should like to stress most strongly is that relating to the preparation, in gradual stages of a complete code of Hindu beginning, as we have said, with the law of succession, to be followed by the law of marriage and in due course by the other topics of Hindu law. It is true that even these large groups are to some extent inter-connected; but it will be easier for the draftsman to see what he is doing if he deals, for example, with the whole law of succession than with isolated rules relating to the property rights of widows. This plan would also offer a better chance of agreed solutions on disputed points, for the larger the field, the more room there is for compromise. The aim should be, as far as possible, to arrive at agreed solutions and to avoid anything likely to arouse acrimonious controversy. This need not mean any real slowing down of the pace of reform; for true reform proceeds by persuasion rather than coercion."

At page 11, they say:

" We do not suggest that all parts of the law should be taken in hand at once. The..... law of succession.may be taken up first, then the law of marriage; and so on. After the law relating to each part has thus been reduced to statutory form the various Acts may be consolidated into a single Code."

That was the report and in pursuance of their report they submitted their Bill relating to the Hindu Code Part I, intestate succession. Before the Bill relating to succession as settled by the Joint Select Committee came up before the Assembly, the Joint Select Committee had itself recommended that it is no good passing this part alone, but that they should have a true picture of the entire Hindu Code as it will stand, as the different parts are inter-dependent and in this way, they recommended that this Bill should not be passed and a truer and a more comprehensive view of the Hindu law should be taken. In their report the Select Committee say:

" We think that steps should be taken to resuscitate the Hindu Law Committee and to encourage the formulation and enactment of the remaining parts of the proposed Code in the interval which is to lapse between the present Bill when passed comes into force. It may well be found that the present Bill will require before it is allowed to come into operation, readjustment and amendment in the light of the decisions taken in connection with the other branches of the Hindu Law. "

So they recommended that the House and the country should have a fuller

picture. The Hindu Law Committee which had been dissolved was thus revived and they were asked to give us a picture of the other branches of the Hindu Law. The first thing which they did was to produce another Bill, the "Hindu Code Part II—Marriage." The second Bill was produced by them and later on they produced the other parts. The point which I am trying to emphasise is that these were separate self-contained Bills. The law of Inheritance was absolutely self-contained and separate and was capable of being enacted separately. The law of Marriage also could be enacted separately. There are three other parts which were in separate parts though printed in one volume was circulated. Then after obtaining opinion, they introduced some changes also by way of supplement. The House will, therefore, be pleased to note the real meaning and purpose of completely separate Bills printed in the same book as separate self-contained subjects with separate numbering. The Law Ministry, however, it seems mistook the purpose of the separate parts with separate numbering. In fact in the report of the Select Committee on the present Bill, the members of the majority say that separate numbering and separate parts was a thing unknown and purposeless, and therefore, they wanted to blend the different parts into one complete whole with consecutive numbering. That is clearly mentioned in the report. That is the reason why they produced a Hindu Code which they thought was self-contained and more logically arranged. The purpose of the Rau Committee of separate enactments and their subsequent consolidation was entirely missed.

The first point, which I should like to take in this connection is that the changes made by the Departmental Committee set up by the Ministry of Law went beyond the purpose of the original Bill, or rather the different Bills. In fact the blending of the different parts of the original Bill into one is the thing which has created a lot of difficulties and has made confusion worse confounded. As was suggested by the Rau Committee, the better thing would have been to pass separate parts separately, so that there will be the least objection and the attention of the House as well as of the country could be focussed upon individual subjects, though they may have a comprehensive view of the entire Hindu Law. Now the blending of the different parts or Bills into one whole with running numbers has placed us in this difficulty that we find in the House that there is hardly any Member who has spoken; who is completely in favour of the consolidated Bill as it has emerged from the Select Committee. Some are in favour of the marriage provisions; others are in favour of the inheritance; with regard to guardianship and other things, there is the least objection. Separate Bills as in the original scheme would have simplified matters and reduced our troubles.

Pandit Lakshmi Kanta Maitra : Maintenance portion is the best ; all the rest is rubbish.

Mr. Naziruddin Ahmad : Maintenance portion, as Pandit Maitra reminds us, is the least objected to. So if the parts were kept separate, then the House would have been in a position to deal more easily with individual subjects. The subject of maintenance is not controversial. It does not affect the religious structure of the society. It does not wound the religious feelings and age-long beliefs of the Hindus and it could have been passed at once. That was the reason for the separate treatment. But the Departmental Committee rather, missed the purpose of the separate treatment and blended the whole thing into one.

Sir, I would point out that in the second Rau Committee report also, the Bill was prepared in different compartments, they repeated their advice that it should be taken up separately. The Bill was intended to be taken up in parts separately and should be dealt with individually.

Mr. Tajamul Husain : Why don't you bring amendments to this effect ?

Mr. Naziruddin Ahmad : My honourable friend by the interruption means to say " I shall mix up things in any way I like, and it is for you to bring suitable amendments to separate them." It is impossible. If you cook meat, fish and vegetables together and ask a vegetarian to separate them by means of an amendment and then take the vegetables alone, that would be to putting the cart before the horse. The Bill has mixed up distinct and separate categories of law into one complete whole.

Shri L. Krishnaswami Bharathi: No, no. There are separate chapters.

Mr. Speaker: The honourable Member is expressing his own view and other honourable Members will have an opportunity of expressing their own views. What is the good of interrupting ? It will only prolong his speech.

Mr. Naziruddin Ahmad : The sections of one part have been lifted from that and placed in another part.

Shri L. Krishnaswami Bharathi : On a point of order. Sir. Am I not entitled to correct, when his statement that it has mixed up different chapters is open to correction ?

Mr. Speaker: That way he will be entitled to correct again. There should be no interruptions. I think, we are unnecessarily impatient. Whatever our views in respect of the Bill for or against, we must give a patient hearing to the opponent and try to meet his points. I am going to give the fullest opportunity to every one. So let there be no interruptions.

Mr. Naziruddin Ahmad: I am very grateful for this direction. The point is that the definitions and other clauses in each part were absolutely separate. It is easy for any one who has the patience to compare the original Bill

presented by Mr. Jogendranath Mandal to the House with the revised Bill to see the difference.

An Honourable Member: Who was Jogendarnath Mandal?

Mr. Naziruddin Ahmad: He was the previous Law Member. If any one compares the old Bill presented by him and the present Bill, it would be easy to see that portions from different parts have been transplanted to other parts. The act seems to be absolutely *bonafide*, but it was not based upon a full appreciation of the purpose of the separate treatment of the subjects. In fact, the Select Committee was presented with a re-drafted Bill by the Ministry of Law. That I submit would be likely absolutely to mislead the Select Committee. It is this document which was printed on the 17th July 1948. It was prepared ready-made for the handy use of the Select Committee before it ever met and the Select Committee was presented with this Departmental Bill I have already dealt with one point, that in this intermediate Departmental Bill a serious departure has been made, namely, different parts have been mixed up into one whole so to make it impossible to put separate parts back to their original shape. It can be done by a research student, not by Members of the House without any such tendencies or inclinations. I submit therefore, that the first mistake was committed by the Departmental Committee in mixing up entirely separate subjects. This introduces a serious and unprecedented constitutional innovation transplanted to other parts. The act seems to be absolutely *bona fide*, but it was not based upon a full appreciation of the purpose of the separate treatment of the subjects. In fact, the Select Committee was presented with a re-drafted Bill by the Ministry of Law. That I submit would be likely absolutely to mislead the Select Committee. It is this document which was printed on the 17th July 1948. It was prepared ready-made for the handy use of the Select Committee before it ever met and the Select Committee was presented with this Departmental Bill. I have already dealt with one point, that in this intermediate Departmental Bill a serious departure has been made, namely, different parts have been mixed up into one whole so to make it impossible to put separate parts back to their original shape. It can be done by a research student, not by Members of the House without any such tendencies or inclinations. I submit therefore, that the first mistake was committed by the Departmental Committee in mixing up entirely separate subjects. This introduces a serious and unprecedented constitutional innovation.

Then, Sir, the Departmental Committee has introduced very serious changes in their Departmental Bill. It will be extremely important when we consider the bearing and the effect of this Departmental Bill on the proceedings of the Select Committee. The Departmental Bill, as I shall

attempt to show introduced many very important changes, though I must point out that neither the Honourable Minister for Law nor the Members of the Select Committee nor the Members of the House seem to be aware of the seriousness of the changes effected. In fact, the Minister for Law on the last occasion when he spoke in the present session in support of the motion for consideration pointed out the substantial changes made in the Bill. But he was careful to insist that all the changes had been made by the Select Committee. I took careful notes of his speech and this can be verified from the official reports. He pointed out with commendable thoroughness the departures made in the final Bill from the original Jogendranath Mandals's Bill. That show that the Honourable Minister was totally unaware of the serious changes made by his Department in the so called Bill submitted to the Select Committee. In fact, I asked a Short Notice Question of the Honourable Minister as to whether the Departmental Committee had been authorised to make any substantial changes in the original Bill. The answer was that they had no such authority. On the other hand, the Minister for Law took the entire responsibility for the changes, if any on himself. To a supplementary question of Mr. Ramnarain Singh the Minister for Law stated " I introduced no changes ". In fact, the point was whether the Departmental Bill had made any substantial changes, and he made it absolutely clear that he had made no such changes and that the Select Committee alone had made the changes. The entire House seems to be of the opinion that the Select Committee made the changes and that no substantial changes were made by the Departmental Committee. On the last occasion when I was on my legs, I was repeatedly asked to point wherein the Departmental Committee had made substantial changes. It is important that I should refer to this, because it shows that the Members of the Select Committee or the House or even the Minister for Law was not aware of any substantial changes really made, and I submit therefore, that, if I can show that substantial changes were really made by the Departmental Committee and very rarely by the Select Committee, it would open up before the House important considerations. The Select Committee were given a readymade new Bill and the assurance in the report of the Select Committee is that it contained no substantial changes and that the changes were rearranging the clauses, their re-numbering and such formal changes as are purely of a drafting nature. This is the assurance we get in the report of the Select Committee. I would therefore, like to point that those substantial changes were made by the Departmental committee. It is not easy to trace the changes and I cannot blame any honourable Member for failing to notice them. I had to prepare a comparative chart, not of the numbers alone, but of the clauses and sub-clauses of the three bills side by side. I asked for a

copy of the Departmental Bill, but it was not supplied. I submit, Sir, that the Departmental Bill is a very important document and should be supplied to the Members. We have been supplied with a report of the evidence of witnesses before the Select Committee, but the most important document which played such a large part in the framing of the final Bill, has not been supplied. It was with the greatest difficulty that I have procured a copy, not from the Department, but through the courtesy of an honourable Member. Then, Sir, I prepared a comparative statement in parallel columns of the appropriate provisions of the original Bill and the corresponding provisions of the Departmental Bill and the final Bill, and I find it extremely difficult to explain the real significance of the changes except by reference to the comparative chart.

I am trying to get the Bills in parallel columns printed. I am sorry it could not be completed and it could not be placed in the hands of the Members for their convenience. But, I shall refer to the substantial changes made one by one. In doing so, I shall refer to the very important changes made by the Departmental Committee. It is on a consideration of the changes by the Departmental Committee that this point will be decided. I shall refer to the changes made by the Departmental Committee which has been officially denied by the Department and also unknown to the Members in the House. The House will be pleased to consider certain clauses of the original Bill.

It is in part I, clause 2, sub-clause (3)(a). The clause corresponding to this is clause 2 of the departmental Bill, sub-clause (2). The original Bill says:

" It shall be presumed until the contrary is proved that the whole of this Code applies to every person who is not a Muslim, Christian, Parsi or Jew by religion."

The original Bill was thus a mere rule of presumption. But in the departmental Bill, it is no longer a rule of presumption but a positive rule of law. In the original Bill, it was to be presumed that, if a man was not a Muslim, Christian, Parsi or Jew, he would be " presumed " to be a Hindu. That would not be a rule of law but a rule of presumption. In the Departmental Bill this is changed to stand like this:

" This Code also applies to any other person who is not a Muslim, Christian, Parsi or Jew by religion. ".

The difference between the two is that under the original Bill any man who is not a Muslim, Christian, Parsi or Jew, would merely be presumed to be a Hindu and would be presumed to be governed by this Act. In the Departmental Bill, it is said that.—

" the Code applies also to any one who is not a Muslim, Christian, Parsi or Jew. "

I submit, Sir, this is introducing a substantial change. While it was a rule of presumption in the original Bill, it is now a positive rule and not one of presumption, that the Hindu law applies to any one not being Muslims, Christians, Parsis and Jews. In the proviso it is said:

If it is proved that the Hindu law does not apply to anyone, the Hindu law will not apply."

I think it is most unsatisfactory way of stating things. The final Bill applies it to them and this with the proviso, has changed the law.

Sir, I submit that this has introduced a serious change. I am not concerned with the policy of the law. But, I am concerned with the changes in the Departmental Bill of which the Select Committee seem to be unaware.

Then, Sir, coming to another part of the Bill. In the Departmental Bill.....

Mr. Tajamul Hussain: May I have your permission to raise a point of order?

Mr. Speaker: Yes.

Mr. Tajamul Husain : My learned friend, Mr. Naziruddin Ahmad has been trying to show before the House that the Departmental Bill was considered by the Select Committee and not the original Bill and he does this after your finding of fact and ruling that the original Bill was considered by the Select Committee. I want to know your ruling now.

Mr. Speaker : I have been hearing his argument and I feel he is speaking in support of his amendment that the Bill be circulated for purposes of opinion and the other amendment is for recommitment to the same Select Committee. Therefore, though my ruling stands, I think, he is trying to make out a case that, there has been such a substantial departure from the original Bill as introduced by Sit. Jogendra Nath Mandal, both in the scheme as well as in the content, that it is necessary now to recirculate or recommit it to the same Select Committee. His point, as I have understood till now, is that the original scheme of the Rau Committee in the first Bill was that the various parts of law should be taken in different compartments. It was possible to separate one from the other, but in the present scheme, the whole having been made as an organic whole, it is difficult now to take certain parts that the people agree to and drop out other parts, with which the people do not agree. How far he is right is another matter. Therefore, he says that, it is necessary to recirculate the Bill for opinion. That is how I have understood the point till now. I do not think he is contradicting my ruling.

Mr. Naziruddin Ahmad : Not in the least. Sir, it will be too late in the day even to suspect that I have questioned your ruling. The ruling was on a point of law. It was very technical in nature. My point of order was based upon some assumptions which could not clearly be proved.

Mr. Speaker: The honourable Member may proceed with his argument.

Mr. Naziruddin Ahmad: I substantially agree that my point of view is that. But it is something more too. In fact, it is my purpose to show that if the honourable the Minister of Law, who is responsible for the Departmental Bill, and the Members of the Select Committee were not precisely aware of the substantial changes made in the Departmental Bill, can it be said that legally and also in fact they have substantially considered both ? They technically considered both, but did they as a matter of fact adequately consider them ? The question no longer arises as a matter of law on account of your ruling, the justice of which I respectfully accept. But the point I am stressing is that though they considered both, they were faced with the obvious difficulty that there was a Bill presented to them which was said to be a mere redraft of the original Bill and a re-arrangement of things of the clauses, with the express guarantee that no substantial changes had been made and yet in fact substantial changes had been made. My point is that though technically the Select Committee considered both the original Bill and the Departmental Bill, they did not and could not, as a matter of fact, give sufficient or adequate consideration to these undisclosed changes. My purpose is to make out a case for recommitment of the Bill to Select Committee or for circulation.

The next change made by the Departmental committee of a substantial nature is in clause 2, sub-clause (4). the change introduced here was made by the Departmental Committee. The change is absolutely new and it was not in the original Bill and is a substantial change. This was introduced by the Departmental committee in the Bill and not by the Select Committee. That is the most important point. The Departmental Bill provides:

" 2(4). Notwithstanding anything contained in the Special Marriage Act of 1872 (III of 1872) this Code shall apply to all Hindus whose marriages have been solemnised, under the provisions of that Act prior to the commencement of this Code."

The original Bill did not contain anything like this and the original Bill left those who were married under Special Marriage Act of 1872 to be governed by that Act. That is divorce, maintenance and other provisions applying to those who were married under that Act would be governed by the provisions of the Special Marriage Act, 1872, which are entirely different. How different from the present Code is not very material. The present sub-clause however wants to make out that those marriages under the Special Marriage Act of 1872, which took place before the Code comes into force, would be governed not by the Special Marriage Act but by this Code. I submit that this is a substantial departure or change introduced in the Departmental Bill and it was introduced by the Departmental Committee and was merely accepted by the

Select Committee as a matter of course. This is a substantial change, whether it is good or bad, whether it is *bona fide* or not is not the point but a substantial change has been effected by the Departmental Committee and the Select Committee was not specifically informed of the change made. Though there are references to clauses of the original Bill, etc. given in the margin, still this sub-clause is absolutely new without any indication whatsoever that this was a change. Changes in sub-clauses have not been indicated. In fact in ordinary Bills coming out from a Select Committee all changes made by the Select Committee are either underlined or sidelined. The Select Committee has stated that this practice is unnecessary, because marginal references have been given. I submit that marginal reference is only to the clauses but this sub-clause (4) is absolutely new. The reference to this sub-clause is Part I, Section 6, page 2 and Schedule I, page 30. The change effected is neither indicated here either by reference or by suitable marking arrangement. At least it is a change of a substantial nature and the attention of the Select Committee was not in any manner specifically drawn to it, nor the nature of the change is indicated. That is change No. 2. I am dealing only with the more substantial and important changes. There are many. I hope at a future time to make available to Members as well as the public a publication which will clearly show the real changes introduced by the Department and the changes really introduced by the Select Committee. I again insist that the Select Committee made very few changes and most of the substantial changes introduced were made by the Drafting Committee.

I come to another part of the Bill. In the original Bill, Part I, clause 3, which deals with the operation of the code in relation to previous customs and usage, it is provided:

" In regard to any matters dealt with in this Code its provisions shall supersede any custom or usage not hereby expressly saved."

The original Bill would supersede only " customs or usages " not thereby expressly saved—all customs not specifically recognised by the original Bill would be superseded. Let us look at the corresponding provisions in the Departmental Bill which also was accepted Without question by the Select Committee. I may point out that the change was effected by the Departmental Committee and not by the Select Committee. In the Departmental Bill, it is clause 4 which corresponds to clause 4 in the final Bill. The marginal note is "over-riding effect of the code " which is much different but I lay no emphasis on this note as it is not part of the Bill. The Departmental Bill says:

" Save as otherwise expressly provided in this Code any text or rule or interpretation of the Hindu Law or custom or usage or any other law in force immediately prior to the commencement of this Act shall cease to have effect

as respects any of the matters dealt with by this Code."

The verbal changes are not important but you will please consider that several important new matters have been introduced by the Departmental Committee. " Any text, rule or interpretation of Hindu law " and later on " any other law in force immediately prior to the commencement of this Code are absolutely new. Let the House pause for a minute and consider the seriousness of the change. All custom and usage not specifically recognised by the original Bill would be absolutely gone. But the Departmental Bill would include also within its mischief any text, rule or interpretation of Hindu law. This is something which is entirely different from usage and custom. In fact any text of the sacred books, the *Vedas* and *Smritis* any rule or interpretation of the Hindu law, that is to say, all ruling of the High Court, the Federal Court and the Privy Council, all authoritative expositions of the original Sanskrit texts or the interpretations by the highest judicial authorities must perish as also any other law in force immediately prior to the commencement of this Code. The sacred texts and the rich case law for over a century and a half would be abolished altogether by a stroke of the pen. " Any text, rule or interpretation of Hindu law " probably includes all things. " Any other law in force immediately prior to the commencement of this code" would probably be included within the passage, but I submit that the Departmental Bill would try to illegalise, if I may be permitted to use the expression, all texts, interpretation of Hindu law or rule not specifically recognised by the Bill, and they will all be gone. I submit this is a substantial change.

Shrimati G. Durgabai (Madras : General) : On a point of order, is the honourable Member within his rights to question the competency of your ruling ? When he calls this Bill as the ' Departmental Bill ' he is making very great insinuation against the members of the Select Committee. The Members of the Select Committee have gone fully into the Bill and they have noted all the changes. He can no longer argue on the point by referring to it as the Departmental Bill. We want your ruling as to whether he is in order.

Mr. Speaker: I am afraid it is hardly a point for ruling. These are observations which, I appreciate, irritate some Members; but I do not think the honourable Member, when he uses the expression ' Departmental Bill ' suggests thereby that the Members of the Select Committee did not consider the points. He is, as I have been noticing, using the expression ' Departmental Bill ' for the sake of brevity instead of saying each time " the Bill which was drafted by the Department for the benefit of the Select Committee Members. " I do not think it goes anything further than that and we should not read any meaning into it. Departmental Bill is only a short phrase for that. As I once pointed out—1 do not know whether the honourable Member was present

when another honourable member of the House raised this point, the point that he is making out is that the changes made by the Select Committee are substantial. And if the changes are substantial then he is certainly within his right to say that the Bill should be re-committed or recirculated. That seems to be the point though he is going his own way, doing so in a very elaborate way which he could do in a shorter time.

Shrimati G. Durgabai ; My point is he is imputing ignorance to the Select Committee members.

Mr. Naziruddin Ahmad : Not in the least. I am imputing, not ignorance, but carelessness naturally following from the Departmental Bill which gave them no clues to the changes. (*Interruptions*). Mr, Speaker: Order, order.

Mr. Naziruddin Ahmad: I withdraw the expression " ignorance ". But they were effected by a mistaken faith in the Departmental Bill. (*interruption*), Even if this is not yet apparent to him I am sorry for the honourable Member that he is still suffering from the obsession.

Mr. Speaker : Let the honourable Member proceed on a different line ', let him say that they should have given more attention to this subject.

Mr, Naziruddin Ahmad: That is what I mean. In fact for my argument I do not require any hard expression—I rely more upon reason than upon an expression. If I have used any expression which is hard, even if not unparliamentary, I withdraw it. The point is we shall again begin with

Mr. Speaker: He need not repeat it; he may proceed further.

Mr. Naziruddin Ahmad: The other point is that not merely have substantial changes been made without sufficient or any clear notice to the Select Committee . . .

Shri L. Krishnaswami Bharathi : That is what we want to object to. He cannot say so. We knew it fully well.

Mr. Naziruddin Ahmad : If the Honourable Minister for Law is unaware of the change and if honourable Members are repeatedly asking me to point out the substantial changes it shows that they are unaware of them and accepted the changes *bonafide* without knowing them. I think the changes were introduced by some over-zealous draftsman who thought of improving the Bill and he introduced some *bona fide* changes without realising that he was thereby making a new Bill altogether, and nobody saw through it.

The Honourable Dr. B. R. Ambedkar: I must really protest against this. It is a grave reflection on the Draftsman. My friend is almost suggesting that after the Select Committee had considered everything the Draftsman took it into his head to make changes in the Bill. I very strongly protest against it.

Shri L. Krishnaswami Bharathi : And we protest against the way in which he is insinuating against the Select Committee Members. Mr. Speaker;

Changes made after the Select Committee report ?

The Honourable Dr. B. R. Ambedkar; That is what he is suggesting.

Mr. Speaker: He means " before".

Mr. Naziruddin Ahmad: Yes, Sir, I am absolutely certain that I said that the changes had been made before the Select Committee met.

Mr. Speaker ? There appears to be some misapprehension.

The Honourable Dr. B. R. Ambedkar: I have no idea. If I understand my friend's speech it simply means that the Select Committee blind-foldedly signed the report without going into anything or it means that after the Select Committee had done its work the Draftsman took it into his head to introduce some changes. It cannot have any other meaning,

Mr. Naziruddin Ahmad : As to whether the changes were made *bona fide* or in a careless or *mala fide manner* it is not material for us to go into.

Mr. Speaker: The honourable Member's point is that changes which he believes to be substantial are made.

The Honourable Dr. B. R. Ambedkar : I am quite prepared to hear any friend setting out *seriatim* the changes which he thinks the Select Committee has made. Assuming that certain changes were made by the Select Committee, I would like to know whether that in itself would be a sufficient ground for re-circulation.

Mr. Naziruddin Ahmad : Not at all : I never said they were made by the Select Committee.

Mr. Speaker: What I was suggesting to the honourable Member was that assuming that certain changes are of a substantial nature in his opinion have been made, his case is strong enough for pleading and he need not say whether the changes were made out of ignorance or *malafides*. The Select committee with an open mind and considering the whole thing could have made the changes. Still he thinks that they are of a substantial nature and, therefore, the Bill should be recirculated. All people need not agree that these changes which he believes to be substantial are necessarily substantial. Opinions may differ.

Mr. Naziruddin Ahmad : The Honourable Minister for Law said that it is for me to show what changes were made by the Select Committee. I have been at pains to show that I am not drawing the attention of the House to changes made by the Select Committee at all. That is I believe the mistake which is haunting the mind of the Honourable the Law Minister.

The Honourable Dr. B. R. Ambedkar: Nothing of the kind.

Mr. Naziruddin Ahmad: In fact he has been insisting that the changes were made by the Select Committee. The changes I have been mentioning so far are changes made not by the Select Committee but made by the

Departmental Committee.

Mr. Speaker: Order, order, there the rub comes in. Whosoever made the changes so long as the Select Committee has accepted them they are changes by the Select Committee and not changes made by somebody else without the knowledge of the Select Committee. He need not make that kind of insinuation or assertion. By whomsoever they were made—even at the instance of a single Member or the Law Minister or the Drafting Committee or anybody else—he should proceed on the assumption that these changes are changes made by the Select Committee and he should proceed to show that they are substantial.

Mr. Naziruddin Ahmad: My difficulty is I cannot stop at that. The Honourable the Law Minister insists that the changes were introduced by the Select Committee and not by the Drafting Committee, that would make it absolutely clear that the Select Committee faithfully and *bona fide* accepted the changes introduced by the Drafting Committee. If that is so the Select Committee did not apply its mind to it when accepting it, knowing it to be a change. If the Select Committee did not know, as the Honourable the Law Minister does not know, that these changes were introduced by the Departmental Committee, they accepted technically, but not with full appreciation, all the changes made. That is the point which makes my case stronger. It is not merely the changes made by the Select Committee willingly but the changes made by them of a substantial nature without realising that they were accepting any changes which makes the case stronger. In fact, they obviously assumed that the Departmental Bill was a mere re-draft without any substantial change. This is corroborated by the fact that even the Law Minister supposes that I am pointing out changes made by the Select Committee. That is why I am constrained to argue that the Select Committee's attention was not specifically drawn to the changes. On the other hand they took the Departmental Bill as a substantial reproduction of the original Bill without any substantial change. I can say that without casting any reflection ; we can always argue mistakes or oversights or *bonafide* errors. I need not put the point better than that.

Sir, I submit that the Members of the Select Committee or the Minister for Law need not be very sensitive about this. It is a matter of record. In fact, even the honourable the Law Minister admitted that he introduced no change and he assumes that I am pointing out changes made by the Select Committee. They have been adopted: as your ruling must be accepted, they must have accepted these changes. But the question I am pointing out is that the consciousness or the legal mind was not directed towards these because they were not aware of it. The Honourable Minister insisted the other day on a

question that the Departmental Committee introduced no substantial changes. The substantial changes are there and they were not indicated in the Departmental Bill. Therefore, there is no question of insinuation. Mr. Speaker: Let us not go into that question again.

Mr. Naziruddin Ahmad: This is one substantial change. Sir, I thought I was treading on very solid ground. If any offence is meant to the Members of the Select Committee by pointing out obvious matters, I am very sorry.

Shri L. Krishnaswamy Bharathi : You cannot insinuate against Members.

Mr. Naziruddin Ahmad: What insinuation ? That they made mistakes ? To err is human. I was only suggesting that the Members of the Select Committee were human beings.

Shri B.Das : On a point of order. Sir, Can the honourable Member go on pointing out the defects of the Select Committee for three months continuously. The point was raised and settled. Whether I accept his words or not is a different question, but the honourable Member cannot go on talking in the filibustering attitude which my friend Mr. Baijnath Bajoria took some years ago on my Bill to amend the Child Marriage Act. He quoted *shastras* and read from the *Mahabharata* and other books. Here the poor Select Committee is being hammered by my friend Mr. Nazirudin Ahmed for the last three months. This is not a law court. Sir, you ought to ask him to produce his views that the Hindu Code Bill should not be passed. Why should we go on interminably talking against the Select Committee? As the oldest Member of this House, I cannot understand it.

Mr. Speaker: The honourable Member may indicate only the substantial changes.

Mr. Naziruddin Ahmad: Yes, Sir.

Sir, I object to my speech being called a filibustering speech. I think the honourable Member goes a bit too far. It seems that he has locked up his mind absolutely and he is not in a mood to hear.

Sir, may I ask you to consider this and see if I am in the least irrelevant or wrong ? Unless the change is substantial, palpably, obviously it rules out texts of the Hindu Law and rule of interpretation by the highest Courts. The original Bill did not contain anything of the sort and the change was introduced to the Departmental Committee. Is it not, in all fairness, a substantial change ? Mr. Das cannot listen to legal matters. He is good in financial matters but in legal matters he is rapidly approaching his second childhood.

Shri B. Das: We are here to legislate. We are not here to understand the interpretation of lawyers or High Court Judges. (*Interruption*).

Mr. Naziruddin Ahmad: Sir, much depends on the substantial changes. Have not these been introduced by the Departmental Committee ? On that

issue the whole case depends. If it was introduced by the Departmental Committee and if it is a substantial change, then the Select Committee was not informed of it. It has been repeatedly made clear that the Select Committee considered the Departmental Bill and not the original Bill. If this is insinuation, I am sorry I shall have to discharge my duty faithfully but absolutely fearlessly though very respectfully. I submit the Select Committee was absolutely cajoled into believing that the Departmental Bill was a substantial reproduction of the original Bill, and even the Honourable the Law Minister is persuaded to believe that there was no change. It is not insinuation, it is a fact. Who has made the changes ? If it were the Law Minister, then he would have been aware of it. Is it somebody else ? Then is it improper for me to point out that somebody else has made the change ? I say he has done it by mistake or *bona fide*. Would it be proper for me to suggest that these changes were made fraudulently ? I do not suggest anything of the sort. The only thing I could do is to assume that these things were done *bona fide*—just a little flourish of the pen to improve upon it. " Why merely rule out customary law ? Let us abolish all the rulings of the Privy Council. "

Sir, criticism is proper. If any language I have used is improper, I withdraw it. But what about the criticism ?

Shri L. Krishnaswami Bharathi: Let us hear the other points.

Mr. Naziruddin Ahmad: Why be anxious ? Why not listen to this ?

Mr. Speaker: Order, order. We cannot carry on the discussion of the Bill in this manner. There are Members who want to support the Bill and others who want to oppose it. Let everyone have his say in any manner he likes, without being offensive or speaking unparliamentary language. That is the only objection. Otherwise, at every stage there will be interruption and those who want to support the Bill will be the sufferers in the long run, because time will be spent in unnecessarily carrying on this kind of discussion. The honourable Member will have his say and if he says that the Select Committee did not give attention to this or that or that these points were not examined by the Select Committee, where is the ground for taking insult in that? He is perfectly entitled to say so. But he should not insinuate something else; that is what I have to guard against. But I believe he is entitled to express his views.

There is another point also to which I was going to invite the attention of the honourable Member. He says that because the Law Minister is unaware of a substantial change, therefore somebody else introduced the change. There is another aspect to it. If the point which he considers substantial is not considered by the Law Minister as substantial, then the Honourable Law Minister is perfectly entitled to say that he is not aware of any substantial change. Therefore, it does not necessarily mean that some other party in

ignorance or behind the back of the minister, introduced it in the Select Committee. Let the points be substantial and let the controversy be limited to the question as to whether the points are substantial or not. That I believe is the chief point in dispute'.

Mr. Naziruddin Ahmad : I stand subject to correction. It may have been done by the Law Minister without realising or without believing this to be a substantial change. But the matter is exactly where it was . These are substantial matters, whether introduced by the Law Minister consciously or by anyone else unconsciously, in any manner. It is not proper for us to argue on that. But by one stroke of the pen all texts, rules and interpretations of the Hindu Law have been abolished. The effect of this will be that all learned rulings of the Privy Council, the Federal Court and the High Courts are all gone, by one stroke of the pen. In fact, if this is not seriously interfering the original Bill, I do not know what is. There maybe difference of opinions. But to one approaching the question absolutely impartially, and with a free mind, there would be no difficulty in agreeing with me that this is very serious interference with the Original Bill.

Shrinati G. Durgabai : Please speak of other substantial changes.

Mr. Naziruddin Ahmad : This is dealing very lightly with a very serious matter. But I say these are very serious changes which verge on interpolations, *bona fide or malafide*, it does not matter.

Then Sir, the next cage made by the Departmental Committee is to remove the definition of ' caste ' in Part I clause 5 sub-clause (b) which contained a definition of caste. This has been entirely omitted.

Mr. Speaker ; What clause does the honourable Member refer to ?

Mr. Naziruddin Ahmad : I am referring to Part I, clause 5, sub-clause (b) which has the definition of ' caste '.

Mr. Speaker: Is he referring to the original Bill ?

Mr. Naziruddin Ahmad: Yes. And that definition has been entirely omitted in the Departmental Bill without any indication being given anywhere about this omission. There is a mere reference in the margin to the original clause. This sub-clause has been omitted, and there is no indication to be found of it. I submit, Sir, that the Select Committee's attention was not specifically drawn to this omission, and whether these are substantial matters or not, there cannot be much difference of opinion. At any rate the Select Committee was entitled to be told that these changes were made; whether these are substantial changes or not may vary from individual to individual. But the Select Committee was entitled to know that these changes were made. But they were not told.

And then we come to sub-clause (f) of the same clause and here we find

that the definitions of *Gotra* and *Pravara* have been omitted. And then in sub-clause (j) the definition of *Stridhan* has also been omitted. Therefore the definition of *Caste*, the definition of *Gotra*, the definition of *Pravara*, and the definition of *Stridhan* are entirely omitted. What effect this would produce on the Bill, cannot be explained shortly on the floor of the House.

Shri A. Thanu Pillai (Travancore State): May I know from the honourable Member whether even if the definition is not of a term required in the law, it should be defined ?

Mr. Naziruddin Ahmad : I think the honourable Member is not proceeding as cautiously as he should. In fact, whether a definition is wanted or not wanted is not the question. A definition was in the Bill and that was removed by somebody, without any authority. The Departmental Committee removed it, and the attention of the Select Committee, who was alone competent to remove it, was not drawn to this fact.

Shrimati G. Durgabai : The Select Committee takes full responsibility for it.

Mr. Naziruddin Ahmad : This was not considered by the Select Committee.

Shri M. Tirumala Rao (Madras : General) : Are you sure that the compositor did not omit it ?

Mr. Speaker : Those who interrupt can also be called obstructionists. If interrupted he will take longer time over it.

Shri L. Krishnaswami Bharati : I may cut short further arguments by saying that the Select Committee's attention was actually drawn to all these things. The honourable Member is unnecessarily harping on this point, that the attention of the Select Committee was not drawn. But as a Member of the Select Committee I may say that all these points were fully considered, all aspects of the matter were considered by the Select Committee. Therefore the honourable Member need not go over this matter over and over again.

Mr. Speaker : I will say that even if the question has been fully considered, the honourable Member is perfectly within his right in giving his views. Honourable Members will see that he is making a case for re-committal of the Bill to the Select Committee, and for this he has been putting forth his arguments. The Select Committee might have given full, adequate, proper, reasonable attention, but in his opinion, it has been inadequate. Therefore, he is insisting that the attention given has been inadequate and the Bill should be re-committed to the Select Committee. That is the line of argument he is following ; and if he is following that particular line of argument, he must maintain that stand. As regards the fact of adequacy just as the Select Committee Members cannot be absolute judges of the fact, as to whether the Bill was given proper or adequate attention, similarly, his judgement also is

not final. But he is placing his opinion. Let us proceed on that basis. Otherwise there will be no end to this discussion.

Shri L. Krishnaswami Bharathi: I was only referring to the question of fact.

Mr. Speaker: It is a question of opinion. What the honourable Member supposes to be a question of fact, is actually a question of opinion. Adequacy of attention of not is a question of opinion and to merely a question of fact..

Mr. Naziruddin Ahmad: The question is the adequacy of consideration.

[*At this stage Mr. Speaker vacated the Chair, which was then occupied by Mr. Deputy-Speaker (Shri M. Ananthasayanam Ayyangar)*]

Mr. Naziruddin Ahmad: Sir, I have been interrupted almost continuously the other day, and again a series of interruptions are made to-day.

Mr. Pandit Lakshmi Kanta Maitra: I am supporting you all along.

Mr. Naziruddin Ahmad : There is my friend Mr. Bharathi. Is he right in telling the House what took place in the Select Committee ? If so, I have equally strong authority, also from the Members of the Select Committee themselves to the contrary. It would be very wrong to compare one Member's statement with that of another and I would rather draw a veil on what happened in the Select Committee. The honourable Member need not assure us that the Select Committee has considered everything. If he is so sure, I am equally sure that for many reasons, adequate consideration could not be given. Shri L. Krishnaswami Bharathi : I was talking only about myself.

Pandit Lakshmi Kanta Maitra : You could not understand things.

Mr. Naziruddin Ahmad: In fact, it is not the case of one man. It is the whole Select Committee and not a one-man affair. If one man has followed, it does not mean that others also have followed it.

Pandit Lakshmi Kanta Maitra : Yes, one swallow does not make a summer.

Mr. Naziruddin Ahmad : Exactly, " One swallow does not make a summer ". If there is one man of the Select Committee who believed that no change was made, that would be enough to make out a case for recommitment of the Bill to the Select Committee. And I again submit that these are very serious changes. And then how many of them ? My friends wonder how many changes there are. I can show them many, 'many such changes. Take the...

Shrimati G. Durgabai : In the meantime, on a point of information, may I ask whether the changes made by the Select Committee are absolutely binding on this House. Cannot the House accept the changes or reject them ?

Mr. Naziruddin Ahmad: I submit with all respect that it is irrelevant to ask if the Select Committee's changes should be accepted or rejected by the House. The Select Committee can make any change and the House can make further changes too. The House can make changes. There is no doubt

about it. But the point is that the Select Committee for some reason did not or could not or failed or omitted to discharge its duties fully. If that is so, the right to go fully into the question rests with the House and it is for this reason that I appeal from the Select Committee to the larger House. There is of course the still larger house, the entire electorate of India. I now come to clause 7 of the original Bill. (*Interruption*). I think some Members have lost their heads.

Mr. Tajamul Husain : I must strongly protest against the statement that the Members have lost their heads. I raise this point of order seriously. He must withdraw it unconditionally.

Mr. Deputy Speaker: I think it was not necessary for the honourable Member to say all that.

Mr. Tajamul Husain : Let him withdraw it. Was he in order in making that statement ? He has all along been making violent gestures against honourable Members.

Mr. Deputy Speaker : I do not think it is proper for the honourable Member to say that the Members have lost their heads. It detracts from the dignity of the house. At the time I must say this: I have been noticing one member or other using language which may not be liked by the person addressed. There must be some amount of patience shown. There should not be interruptions either by the spoken word or by signs. Therefore when the honourable Member is turning over the pages of some of his papers, if they interrupt him he will miss it and their interruptions are likely to ginger him up.

Mr. Naziruddin Ahmad: Sir, I was told across the table that I had lost my head.

Mr. Deputy Speaker: The honourable Member has lost his thread—the thread of his argument.

Mr. Tajamul Husain : May I know whether he has lost his sacred thread ?

Mr. Naziruddin Ahmad : I will proceed with my arguments. Sir. Clause 2 of the original Bill gives the definition of ' son ' thus ' son ' includes a *dattaka kritrima* or *godha son*, etc, but not a *dasiputra* and others. This has been entirely committed in the Departmental Dill.

Shri L. Krishnaswami Bharathi : When an honourable Member reads out something, should he not do so correctly ?

Mr. Naziruddin Ahmad : I find that this has been omitted. If it is anywhere the definition or in any other part of the Bill, my attention may kindly be drawn to it.

Mr. Deputy Speaker: The honourable Member who just now interrupted the speaker has been again and again giving advice. Mr. Naziruddin Ahmad may be a bit slow in making the references he desires to make. He need not be interrupted.

Mr. Naziruddin Ahmad : I submit that the definition of ' son ' has been omitted. If I am wrong, the mistake may be pointed out to me.

Dr. P. S. Deshmukh (C. P. and Berar: General): I think the honourable Member is wrong.

Mr. Deputy Speaker : If honourable Members go on interrupting in this way it will be impossible to conduct the business of the House in an orderly manner. Mr. Naziruddin Ahmad may go on without putting questions to other honourable Members.

Mr. Naziruddin Ahmad : As I said the definition of son has been omitted as also the illustrations found in Part II, sub-clause (3) of clause 2 in regard to intestate succession. Four illustrations have been omitted. These are substantial changes. I am only trying to draw attention to the nature of the changes made. According to me these are omissions of a very serious nature. They are not omissions of a drafting nature. I am not questioning the right of the Select Committee to improve the Bill, or to make these omissions. These changes, however, were made not by the Select Committee but by the Drafting Committee and the attention of the Select Committee was not particularly drawn to these omissions.

Then I come to another important part of the Bill to show the very serious changes introduced by the Drafting Committee. In Part II, clause 4 of the original Bill, the list of heirs has been given. It says that the inheritable property of a male intestate shall devolve according to the rules laid down in this part: (a) upon the enumerated heirs referred to in section 5, if any ; (b) if there is no enumerated heir, upon his agnates, if any ;(c) if there is no agnate, upon his cognates, if any; and (d) if there is no cognate, upon the heirs referred to in section 10, if any.

Mr. Deputy Speaker : I do not know if the honourable Member has not a copy of the Hindu Code Comparative Tables, which was circulated to all honourable Members. The original Hindu Code as drafted by the Rau Committee has been revised in the Ministry of Law and the changes made have been indicated there. I would therefore suggest that the honourable Member need not labour this point. I think he has spent sufficient time over the first point. I personally think that the point is sufficiently clear and of course illustrations can always be multiplied. If it is a point here and there, the House will take it into consideration. There are certain points which when made are sufficient in number. I agree they can be made clearer, but the changes made in the tables, are sufficient.

Mr. Naziruddin Ahmad: Sir, the list is neither complete nor accurate and does not indicate the changes made. In fact the remarks against the original clauses of the original Bill and as to the changes are extremely meagre. I

have now come to a very important change, namely the inheritance. It has been so changed as to make it impossible to recognise with the new Bill or the departmental draft nor is it a substitute for the original Bill at all. I submit that with regard to the inheritance a larger number of changes had been made.

I shall show first of all that in clause 4 of the Bill in Part II (a) regarding the enumerated heirs ; I am in a position to show that serious changes have been made in the enumerated list. In the original Bill was one and in the revised draft by the Departmental Committee they are completely different. The original arrangement has been made entirely topsy-turvy and then it is said that if there are no enumerated heirs the property devolves upon agnates. The definition of agnates is well-known. That was in the original Bill, but in the Bill as revised by the Departmental Committee the word ' agnate ' is now very much restricted. So in case of the numerated heirs failing the agnates, even the distant agnates would be entitled to be heirs according to the Hindu law, according to the Muslim law and every other law and that was according to the original Bill. But in the revised draft by the Departmental Committee the word 'agnate' has been seriously modified to be within certain degrees. So agnates which are beyond those degrees would have been entitled to inheritance under the old Bill, but under the Departmental Bill, they would be shut out. Similarly, cognates are also restricted in the Departmental Bill and this is a substantial change as it eliminates the distant Agnates and distant cognates. Then, Sir, in clause (d) of 4, the words preceptor and others are entirely eliminated. The scheme of inheritance in clause 4 of Part II of the original Bill is changed at every step and very serious changes have been made and the enumerated heirs have been changed. The agnates have been restricted; the cognates have been restricted and the other clauses have been entirely eliminated. I can quite understand that these changes may be legitimately made on a full consideration by the Select Committee, but these were changes not by the Select Committee, but by the Departmental Committee and Members asked me " Tell us what are the changes made ? "

Mr. Deputy Speaker: Am I to understand from the honourable Member that if the Select Committee Members all got up and they address themselves to that, will the honourable Member be thoroughly satisfied with what has been done by the Select Committee.

Mr. Naziruddin Ahmad: The point is that the Select Committee Member were not made aware of the changes.

Mr. Deputy Speaker: It serves no useful purpose. It is not a question of law whether this House has got jurisdiction over the Select Committee's piece of handiwork. It has been decided and sufficiently discussed to show that the

Select Committee has looked into every one of the clauses to come to a conclusion. But on matters of substance, the old law has been widely changed. There is some substance in that. Those are the matters on which the honourable Member should address the House. I do not say that all that has been said is out of place, but sufficient has been said.

Mr. Naziruddin Ahmad: To many honourable Members sufficient has not been said. It is said that these are not substantial changes and I shall take care to point them out. The difficulty is that the changes are too numerous to ensure the attention of the House. In fact the changes are very serious and very various and very substantial and my point is that they were introduced not by the Select Committee and whether they accepted them or not is a different matter. My thesis is that they were presented with a ready-made Bill with the assurance that no substantial changes had been made and so the attention of the Select Committee was not sufficiently drawn to that matter. Now let us consider the actual changes in the list of inheritance. In fact in the original Bill the list of inheritance is to be found on pages 4, 5 and 6 in the body of the Bill. This has been bodily lifted from this place in the departmental Bill and transported to the Seventh Schedule. While the other parts remain in the body of the text, the list of inheritance, strangely and for unaccountable reasons, removed. It is not very easy to compare the original list with the new list as it appears in the Seventh Schedule; there have been serious and substantial changes. The Honourable Minister wanted to know what are the changes made.

The Honourable Dr. B. R. Ambedkar : I am quite aware of them. So far as I am concerned, you need not spend your labour in enlightening me at all.

. Mr. Naziruddin Ahmad: If these are intentional changes, then what is the point in saying that no changes were made by the Drafting Committee, and that all the changes were made by the Select Committee, and for the Select Committee say: " We confined our attention to the Departmental Bill ". Therefore, it follows that their attention was not drawn to this. It is a very simple conclusion.

The Honourable Dr. B. R. Ambedkar : Give it in your own way.

Mr. Naziruddin Ahmad : It seems to me that the Honourable the Law Minister found himself in an inconvenient position and somehow or other, though the mistake is admitted, it is not done pointedly. In fact changes of a substantial nature were made. I was asked on the last day by the Honourable Law Minister himself: " Let us know what are the changes made by the Drafting Committee ", and now he says : " I know everything ". Of course he must have studied them later on, but these changes are of a serious nature. They were introduced not by the Select Committee, but by the Departmental

Committee and the question is how far the Select Committee did actually notice them. At least in the note of dissent Dr. Bakshi Tek Chand says: " We confined our attention to the Departmental Committee Bill and not to the original Bill " because they were assured that in the Departmental Bill they did not introduce any substantial changes at all. So taking this into account, I do not know where to go. Infact, if that is not a serious irregularity and a matter requiring attention of the House. I do not know, what is. When the Department has committed an error of judgement, I think it is better and proper to admit it than to say: " I know all this but no changes were made ; every change was made by the Select Committee " and when I say that the Select Committee did not make the changes and they were made by the Departments Committee then it is said: " I know it ". Then we ought to know where does the Department stand ? If the Department makes a change.....

Shri B. Das : This is not a law court for us to hear point by point. The honourable Member should make a speech and sit down.

Mr. Deputy Speaker: The honourable Member, Mr. Das made this statement when the Speaker was in the Chair. It is a law court in some sense and not a law court when he wants to impress upon honourable Members as if he is arguing a case in a court of law. In any case we ought not to interrupt him. That kind of talk ought to be avoided as far as possible.

Shri B. Das: We are talking among ourselves.

Mr. Deputy Speaker: The honourable Member has no right to talk when another honourable Member is on his legs and he ought not to disturb.

Shri B. Das: He is talking at us.

Mr. Deputy Speaker: You ought not to talk. No honourable Member has the right to talk while another honourable Member is speaking. He ought to listen and not cause noise in the House.

Shri B. Das : You understand the exasperation. I am ready to get out, but the honourable Member's speech should not exasperate Members of this House.

Mr. Deputy Speaker: This is wrong. No honourable Member's speech ought to be called exasperating, unless he uses bad language or unparliamentary language. We may or may not agree, but the honourable Member is putting his case before the House. Nobody has a right to dub an honourable Member's speech as exasperating.

Shri B. Das: I accept your verdict. But he used terms such as "fraudulent " about the Law Minister.

Mr. Deputy Speaker: The Honourable Law Minister is sufficiently strong to take care of himself.

Mr. Naziruddin Ahmad: I beg to submit that the honourable Members

should compare the original clause.

Mr. Deputy Speaker : Are there any matters of substance by which the honourable Member can induce the House to change its mind ?

Mr. Naziruddin Ahmad: There are substantial changes. I shall have to point out these things. In fact, I shall have to go on enumerating a large number. The best thing is to admit the mistakes or listen patiently. I must enumerate all the points and if I repeat my argument or be irrelevant, I can be called to order. In Part II, clause 5, there is Class 1. Sons, widows, daughters and so forth. A change has been effected in this by the Departmental Committee. Son of a predeceased son of predeceased son has been newly introduced in the corresponding part of Class I in the 7th Schedule in the Departmental Bill. In fact, the Schedule has been so far removed from its place in the original Bill that it is not easy to notice it unless the two Classes are placed side by side, to find out the change. In fact, the son of a predeceased son of a predeceased son did not find a place in the original, but it has been introduced in the Seventh Schedule of the revised Bill by the Departmental Committee.

Then we come in the other lists. The first in the list in the original Bill after the enumerated heirs in item No. 2 is daughter's son. In the Departmental Bill, the daughter's son has been brought further down. Then comes the father and the mother. According to the original

Bill, the mother would have been entitled to inherit in preference to the father. Here the father and the mother have been placed together in the Departmental Bill and their order has been changed and whereas under the Departmental Bill they inherit together under the original Bill the mother would have inherited first to the exclusion of the father, and in the absence of the mother the father would have inherited. The daughter's son as has already been pointed out, has been brought down further in the Departmental list. It should be obvious to any one who cares to consider this matter that these are substantial changes.

Then we come to Class III of the original Bill. The brother's son's son who was first in the list of Class III in the original Bill has been entirely lost sight of in the Departmental Bill. If this was deliberate an intentional, then we would have got some indication of it in the report of the Select Committee or in the speeches. I want to know if this is a substantial change. It may not be substantial to a man who is not the brother's son's son, but to the brother's son's son, it is a substantial change, because in the absence of other heirs he would have been entitled to property.

Next in the list comes the sister. We have now the brother and the sister inheriting together in the Departmental Bill. The brother who was very high up

in the list in the original Bill has now been transferred and brought down to of Class III and is inheriting with the sister (*Interruption*).

Am I to stop my argument ?

Mr. Tajarnul Husain: The honourable Member has no right to speak to another honourable Member. I object to it very strongly. Sir.

Shri Lakshminararan Sahu (Orissa: General): There is no quorum it seems.

Mr. Deputy Speaker: There is quorum.

Mr. Naziruddin Ahmad : Supposing a man dies leaving a brother and a sister. Under the original Bill the brother would have inherited, the sister would have been postponed; but under the Departmental Bill the brother and the sister inherit equally. The brother is now brought down on a line with the sister having been superseded by 11 others in the list. I submit this is introducing very substantial changes.

Then we come to brother's son. He was very high up, in Class 1. He is by the Department brought down to Class III along with sister's son. If a man died leaving a brother's son and a sister's son, under the original Bill, the brother's son would have inherited, but under the Departmental Bill the brother's son and the sister's son inherit together. I submit these are very substantial changes.

Then I come to Class IV of the original Bill. In Class IV of the original Bill, a man dying leaving a father's mother and a father's father have been treated differently in the original Bill and the Departmental Bill. Between the father's mother and a father's father being the heirs under the original Bill, the father's mother would have been preferred; the father's father would have been postponed. But under the Departmental Bill both have been put together and they inherit together. I ask whether this is not a substantial change.

Then, Sir, we have a certain class of heirs in Class IV, items (IA), (IB), (IC) and (ID). These were introduced by an amendment of the original report by the Rau Committee. In the original Bill, if there was a father's widow and a brother's widow, the father's widow would have been preferred to the brother's widow. In the Departmental Bill the father's widow and the brother's widow inherit together. I submit this is a very substantial change—whether good or bad, it is not the point. Then coming to two other heirs in the supplementary list introduced by way of amendment of the Rau Committee brother's son's widow and brother's son's son's widow are entirely omitted in the Departmental Bill. In the original Bill they would have inherited one after the other. In the Departmental Bill they are omitted. There is nothing corresponding to this in the Departmental Bill.

Then coming to item 2, Class IV, the father's father is very low in the

original Bill but he has been brought up very much higher in the list prepared by the Departmental Committee.

Then Sir, we come to the father's brother and also to father's sister. Father's brother is No. 3 in the list. Father's sister is sixth in the list. So in the original Bill, if there was the father's father and the others, the father's father would be preferred. Then comes the father's brother, father's brother's son, father's brother's son's son and then the father's sister. In the Departmental Bill the father's father and the father's sister have been brought together, the latter being brought higher up.

Then there is a large list of heirs which has been entirely omitted. Nos. (4), (5), (7), (8) and (9) are heirs in the original Bill. They are nowhere in the Departmental Bill. They are entirely eliminated.

I know, Sir, that it is a tedious business to refer to this but I am discharging a duty and I undertook to supply every Member with a copy of the comparative statement which is in course of preparation. I shall ask the Members to verify each change and I shall be most glad if I am proved to be wrong.

The Honourable Dr. B. R. Ambedkar : I hope it shall be supplied free of cost.

Mr. Naziruddin Ahmad: If the Government thinks I am a charitable institution then I shall be glad to deserve the hope.

Mr. Deputy Speaker: Had it been supplied earlier all this time would have been saved !

Mr. Naziruddin Ahmad: The pity is that my printing press is worse than the Government Printing Press.

Mr. Deputy Speaker: If the suggestion had been made to the Honourable the Law Minister, he would have had it printed.

The Honourable Dr. B. R. Ambedkar : Certainly, I would have had it printed.

The Naziruddin Ahmad : I have the manuscript ready. I shall be glad if the Honourable the Law Minister would publish it.

The Honourable Dr. B. R. Ambedkar : Now it would be of no use because you have said the same thing on the floor of the House.

Mr. Naziruddin Ahmad : Now we come to Class V of the original Bill. By strange accident—1 should be afraid to insinuate anything— everything in it has been omitted in the Departmental Bill. It contains nine classes of heirs and four other supplementary heirs. Thirteen heirs in Class V of the original Bill have been entirely omitted, whether by mistake...

The Honourable Dr. B. R. Ambedkar: Very deliberately!

Mr. Naziruddin Ahmad : But then why did the report of the Select

Committee say that no substantial changes were made ? If these were omitted deliberately, then the only point is whether these are substantial changes. The House has been assured by the Honourable the Law Minister that no substantial changes were made. That these changes were made deliberately is now admitted. The question now therefore is whether these are substantial changes. But we have been assured that no substantial changes have been made.

The Honourable Dr. B.R. Ambedkar: That is a matter of opinion.

Mr. Naziruddin Ahmad: Then the question turns upon this whether these are substantial changes. It may not be very important from the point of view of the law-giver but it may be important to the heir. If you disturb the order of heirship in the slightest degree, it is a substantial change. Up to this time we had been assured that the changes that were made were only of a drafting character. The report of the Select Committee is that the Department made no substantial changes. The report is so clear and emphatic and they emphasize the points so clearly, that they say no substantial changes have been made—only renumbering and some merely verbal changes were made and that for this reason that the usual method of indicating the changes by side-lining or under-lining the changes had not been adhered to in the Departmental or the Final Bill.

Now the question of questions at last boils down to this : Whether these are substantial changes ? What is the test for this ? Upsetting of heirs' lists is not a substantial change ? I submit it is. If it is that I am arguing too much, arguing as if in a Law Court—if any honourable Member thinks it is so—then it seems that the seriousness of the changes has not been fully appreciated.

Mr. Tajamul Husain: Except by you !

Mr. Naziruddin Ahmad: It is very unfortunate that this should be appreciated only by one man! Of course there is a highly paid department and a highly qualified Law Minister, who is able to appreciate the slightest differences and I am sorry that I have had to undergo all the trouble and expenditure of time and money to find out and explain all this. It has not been a very easy matter and the difficulty was further enhanced by the fact that the Department which introduced all these changes could not make available to me a copy of their draft Bill. It was after a great deal of searching that I could procure a copy. So the search has been prolonged and the consideration has been prolonged and it has been for me a very difficult matter. I do not mean to say that any other Member is, not capable of appreciating it, but few have the time or the inclination to go through them. And why should they ? Isn't it the duty and the obvious privilege of every Member—and I say this in defence of Members—to rely on the Ministry of Law, to rely upon the express guarantee

in the Select Committee report that no substantial changes have been made ? I think they would be fully justified and when an honourable Member said that none expect me knew this, I cannot blame him. The blame lies with the Department. Now, is that the end of these changes ? By no means.

Come to Class V-A. It was introduced by the Rau Committee by an amendment of their earlier Bill. They have noted that this Class V-A should be introduced after Class V. Class V-A has been entirely omitted. I humbly suggest that it is an inadvertent omission, but inadvertent or intentional, it is absolutely damaging to the integrity of the Bill. Then, Sir, we come to Class VI. (*Interruptions*)

Mr. Deputy Speaker: The honourable member will go on.

Mr. Naziruddin Ahmad : Then we come to Class VI, items (1) and (2)—mother's mother and mother's father. The mother's mother would be preferred to mother's father under the original Bill but they have been put together in the Departmental Bill. So they now inherit equally together. In item (3) of Class VI, the mother's brother and mother's sister inherit—the latter after the former under the original Bill, but under the Departmental Bill, they inherit together. Under items (4) and (5) mother's brother's son has been entirely left out in the Departmental Bill. Items (7), (8) and (9)—mother's sister's son, mother's brother's daughter, mother's sister's daughter are also entirely omitted.

Then item (3) in Class VI is also entirely omitted.

This concludes the list of inheritance in which there are no less than 20 transpositions, additions and omissions. Heirs have been entirely eliminated either intentionally or deliberately but this does not appear from the Select Committee's report. I have been repeatedly asked by honourable Members of the Select Committee in the House to point out where the differences lie. I do not want to blame any honourable Member for not noticing them. On account of the transposition or removal from their original places the changes would not be obvious. And there is the guarantee in the report of the Select Committee that there is no substantial change. These were changes through the Departmental Bill and may have escaped the attention of the Select Committee. At least their attention was not drawn to them in the Departmental Bill. There is a very respected and capable Member, Dr. Bakhshi Tek Chand who says in his minute of dissent that the Select Committee confined their attention to the Departmental

Bill, because they were assured that no substantial changes had been made. I would ask Dr. Bakhshi Tek Chand whether his attention was drawn by the Department or Dr. Ambedkar to these things. These large omissions and transpositions of places would not have been noticed by any Member unless he goes through the laborious process of comparing the two like a

laborious lawyer.

Dr. Bakhshi Tek Chand (East Punjab: General): I would like to draw the attention of my honourable friend to page 9 of the report where my note of Dissent is printed. I have given there some of the substantial changes, at any rate changes which I considered to be substantial—and because of which I had suggested that the Bill should be recirculated for eliciting public opinion or in any case recommitted to the Select Committee. At page 9 the broad points on which changes had been introduced in the redrafted Bill, have been mentioned though not in such great detail as the honourable Member is doing today in his speech. It is not correct to say that no member of the Select Committee noticed them. Of course nobody had the industry or the patience which the honourable Member has, but the matter did not escape their attention. As he has mentioned my name I feel it my duty to bring this fact to the notice of the House. In the Note of Dissent I have referred to the changes to the order of inheritance which I considered to be substantial, and in regard to which I am in entire agreement with my honourable friend.

Mr. Naziruddin Ahmad: I am extremely grateful for this clarification, A respected Member with the highest judicial experience thinks that these are substantial changes and he thought that they were so substantial that the Bill should be recirculated. That is the thing which I am asking for. There is at least one Member of the Select Committee who thought the changes to be substantial. He noticed them, but was his attention specifically drawn to them?

Pandit Thakur Das Bhargava (East Punjab: General): Mr. Balkrishna Sharma has also signed it.

An Honourable Member: He has had no judicial experience.

Pandit Lakshmi Kanta Maitra: He has had social experience.

Mr. Naziruddin .Ahmad : Pandit Balkrishna Sharma is also of the same opinion. It is however enough to quote the name of Dr. Tek Chand. His authority and position will not be seriously enhanced by the addition of any other names. These respected Members felt that these are substantial changes and therefore thought that the Bill required recirculation. There are changes in other parts of the Bill which would required herculean labour to find out.

In view of these changes made by the Departmental Committee and in view of the weighty remarks of Dr. Tek Chand that these were very substantial changes I think the matter should not admit of any doubt that the Bill should be sent to the Select Committee to reconsider these changes or to recirculate it.

An Honourable Member: The same Select Committee.

Mr. Naziruddin Ahmad : I have no objection to the same Select Committee. It consisted of men absolutely good and true, men with judicial and legal experience and who are practical authorities on those branches of the law. In fact, all kinds of talents were represented in the Select Committee. I have the fullest confidence in the Select Committee and I have not lost my faith in it. My point is that these matters should be carefully scrutinised and each change carefully weighed and deliberately accepted. Substantial changes have been quietly and deliberately introduced. We are assured by the Law Minister and again by the Select Committee that no substantial changes have been made. On the one hand we have the opinion of the highest legal talent in the House saying that these are substantial changes and on the other, another legal luminary says that he has deliberately introduced these changes and at the same time, that he has introduced no substantial changes. That is the guarantee under the signature of Dr. Ambedkar himself. So the Select Committee is hopelessly divided within itself. If two such eminent authorities differ on a broad matter like this I think the matter requires reconsideration by the Committee and that is what I ask for. Though the Law Minister thinks that these were not substantial changes only an unsophisticated House would agree with him. A man's right to inherit is a substantial right. To say that changes therein are not substantial changes would be to say something that is palpably and obviously wrong. I submit therefore that the changes being substantial and the guarantee being that no substantial changes have been made, on this ground alone the Bill should be sent back to Select Committee or for circulation with the positive direction that their attention should be directed towards these changes and they should consciously, intelligently, wilfully accept or reject them. There are other substantial changes.

Shri B. N. Munavalli (Bombay States): He is simply repeating the same arguments.

Mr. Deputy Speaker: I thought he had concluded that topic. If he has no other topic he may sit down.

Mr. Naziruddin Ahmad : I have other very serious changes. The point I would like to know is for how long the Honourable Law Minister would insist on saying that there are no substantial changes.

Shri Khurshed Lal (Deputy Minister of Communication) : Till you have finished.

Mr. Deputy Speaker: Does the honourable Member with his experience as a lawyer ever expect the mover of a Bill to admit that what he has done is wrong ?

Mr. Naziruddin Ahmad: Sir, I bow down to this weighty observation of

yours. But this is not a law court for us to take sides. It is a Legislative Assembly where we have no sides. We may express our opinions honestly but we do not take sides for the sake of fees : we are not committed to one side or another. I submit that in the Legislature, a Law Minister responsible to the Legislature should make it his duty to make an admission if he is wrong. I therefore have a faint hope that this accumulation of errors, of changes, would induce in a slight degree the Law Minister to admit that he had made substantial changes and thereby to make further progress of my argument absolutely unnecessary. But in view of the fact that the honourable the Law Minister stands to his gun like a good fighter—he has been a fighter all his life and he is famous for his grit and moral quality— as he stands to his gun, I have to submit to him more and more changes just with a faint hope to induce him ultimately to concede.

Shri Khurshed Lal : I do not wish to interrupt, but is it his intention to go on in this manner till he has made the Law Minister admit that he has made a mistake ?

Mr. Deputy Speaker : Why the Law Minister alone ? Possibly other Members also agree with him for he has carried the House with him.

Shri B. Das : How do you say so. Sir ? We can howl him down.

Mr. Naziruddin Ahmad : It is not so very easy. Sir, I have been threatened with being howled down. I am yet to see a Member who can howl me down here—I have yet to see him. I respectfully invite anyone to howl me down. He will find that I do not even require the microphone to be heard in the House in the midst of howlings.

Mr. Deputy Speaker: I request that the challenge need not be accepted on the floor of the House!

Mr. Naziruddin Ahmad : He will not find it safe to challenge me outside the House.

Mr. Tajamul Husain : You did not like us to interrupt and therefore I want your permission first to seek a point of information. The point I want to know from my honourable friend is that today is the 1st of April. Is that the reason why he is taking up the whole day on this Bill?

Mr. Naziruddin Ahmad: That question should be addressed to the Honourable Law Minister for bringing the motion on the All Fools Day!

Mr. Deputy Speaker : Whether it applies to anyone or not let the honourable Member proceed with his speech.

Mr. Naziruddin Ahmad: Then we come to the next clause of Part II of the original Bill.

Dr. Mono Mohan Das (West Bengal : General) : Sir, it 'appears the honourable Member is not prepared.

Mr. Naziruddin Ahmad : I could not catch the honourable doctor.

Mr. Deputy Speaker: He may go on. I hope he will conclude his speech at least today.

Mr. Naziruddin Ahmad: I do not know. Mr. Deputy Speaker: I would only say that enough has been said so far on this point about changes of substance. After all it is not the honourable Minister in charge of the Bill who alone need be satisfied. He holds his point of view.

The Honourable Dr. B. R. Ambedkar : *The House will decide.*

Mr. Deputy Speaker: Yes, the House will decide it ultimately. Therefore the honourable Member need not take further time in driving it home to one individual Member however important he may be. He may try to carry the House with him. As I have already said, enough has been said in regard to the matter of substantial changes. I thought he was going to refer to other matters of substance like marriage, divorce, adoption. I do not think the honourable Minister would be dogmatic and I am sure that though in respect of this he may have strong views he would like to wait and see how far there are arguments on the other side, and he may be convinced. I thought the honourable Member would come to matters of substance. A long time has been spent on this point already.

Mr. Naziruddin Ahmad : I must frankly express my gratefulness to the Law Minister for listening to me so patiently. I submit that I have other points indicating changes which I shall show briefly.

Mr. Deputy Speaker: Leave along the changes. There are changes. I may put it this way. I am not letting down a secret and there is no secret from the House as I conceive. When a matter comes before the House after having been referred to Select Committee, the Select Committee might commit a mistake and it is open to the Members to say that it is wrong and the wrong has to be corrected. Except one or two matters as for example what each member said in the Select Committee which ought not to be placed before the House as things are in a fluid condition and it would result in a disturbance and antipathy. I may say this. So far as the Select Committee is concerned any draft may be considered. The draft was of the Ministry here. At the outset it is said in Para. 2 of the Select Committee's report here:

" The draft Hindu Code, as introduced in the Legislature, did *not* receive any Departmental scrutiny prior to its introduction, and the Ministry of Law (*which certainly includes the Minister of Law at its head*), which had an opportunity to examine the Bill during the period between the end of the last session of the legislature and the beginning of the present session, have now produced a revised draft..... "

The draft was placed before the Select Committee and the ruling of the

Speaker is that the original Bill that was sent to the Select Committee, along with the draft—which we will assume is the complete list of all the amendments which the Law Minister wanted to introduce—was all considered by the Select Committee. It is open to the honourable member to say that the Bill and the clauses in it are wrong, that they upset society and that sufficient attention was not paid to the changes that were effected in the Select Committee to the original Bill. I think that would help the House to come to a conclusion regarding either the whole Bill or individual clauses in it on matters of substance. We have already spent a lot of time over this matter. It is necessary that on this matter there may be clarification and I do not think anyone here wants to dogmatise upon a particular matter.

The Honourable Dr. B. R. Ambedkar: I might say openly that I have not an empty mind but I have an open mind. Mr. Deputy Speaker: That is what we expect.

Mr. Naziruddin Ahmad: I am very grateful to him. Sir I come to another branch of the Bill. I would like to draw the attention of the House to clause 102 of the Departmental Bill which corresponds to clause 101 of the final Bill. This was introduced for the first time by the Departmental Bill. The Select Committee made some changes, but the Departmental Committee had introduced a serious change. It is provided in the Departmental Bill that if there was a male and a female in the same line, the male shall take double of the female. In the final Bill their shares are made equal. As regards the justice of the final Bill, it does not matter, but I submit this new introduction is a departure.

Mr. Deputy Speaker: Even if there are, say, 100 departures, is it necessary to exhaust all the 100 departures? Only some ten or fifteen—even these are many—by way of illustration will be enough. He may take a few departures and say that for these reasons the matter should be sent back to the Select Committee or sent round for eliciting public opinion. I thought the honourable Member concluded that portion referring to various items where there is a departure. There are departures and the list which has been circulated contains a list of departures extending over thirteen pages, though it does not state how the departures have been made.

Mr. Naziruddin Ahmad: Departures have not been noted.

Mr. Deputy Speaker: True, they have not been noted in the manner of departures. It is admitted there are departures but only some important items may be taken for the purpose of showing that on account of these departures the Bill should be sent to the Select Committee or to another Select Committee or that it must go round the country for opinion. I think we are taking too much time on this.

Shri B. Das: Sir, I said that all along.

Mr. Naziruddin Ahmad : I can quite appreciate the exasperation of one or two Members. Shri B. Das: Sir, he is using the same word!

Mr. Naziruddin Ahmad: Sir, I draw attention of the House to clause 103 of the Departmental Bill which corresponds to clause 102.....

Mr. Deputy Speaker: I have already pointed out with reference to this.

Mr. Naziruddin Ahmad: This is an important matter.

Mr. Deputy Speaker: I can only suggest to the honourable Member. I cannot argue for him. I can only say that instances need not be multiplied. According to him there are a sufficient number of instances, but if he thinks he has forgotten one point which is more important than others then he may point it out.

Mr. Naziruddin Ahmad: Clause 103 of the Departmental Bill corresponding to clause 102 of the final Bill restricts the agnates to five degrees. The change restricts the heirship to five degrees only. In case there are no enumerated heirs, then according to the Hindu Law the property will go to the agnate, but the definition of agnate has been seriously curtailed and reduced to five degrees. In the next clause, clause 104 of the Departmental Bill corresponding to clause 103 of the final Bill, cognates are also similarly restricted to five degrees. This is a serious departure from the conception of the Hindu Law and from the original Bill. Any agnate, however distantly connected, would be an heir in the absence of preferential heirs. With regard to cognates also, in the absence of agnates any cognates, however distantly connected, would be heirs. So, with regard to cognates the change is entirely new. With regard to agnates it is a serious departure from the original clauses. They merely described that in the absence of enumerated heirs they go to agnates, and in the absence of agnates they go to cognates.

Mr. Honourable Dr. B. R. Ambedkar: Cognates or agnates ?

Mr. Naziruddin Ahmad: Cognates.

I submit these are serious changes. According to Dr. Ambedkar these are not serious because he has made the changes.

Shrimati G. Durgabai: Serious and substantial changes!

Mr. Naziruddin Ahmad : Substantial if you like. I think they are not merely substantial but also serious. *Serious* goes a degree further. In fact, this restricts the right of heirship of certain people.

Mr. Deputy Speaker: Is the honourable Member not closing at five ? Enough has been said on this topic.

Mr. Naziruddin Ahmad : No, Sir. Not enough to convince some of the Members. I want to absolutely convince them.

Shri Khurshed Lal : Then you will have to argue till doomsday.

Mr. Deputy Speaker: If he has not been able to convince for five hours now, he will not be able to convince him at the end of another five hours.

Mr. Naziruddin Ahmad : The Honourable the Law Minister has though not a vacant mind, an open mind and he will in the long run be convinced.

An Honourable Member: He will ponder over your speech tonight.

Mr. Naziruddin Ahmad : Clause 10 of the original Bill has been entirely omitted in the Departmental Bill—absolutely forgotten. In fact in the Hindu law, as in the Muslim law, in the absence of enumerated heirs, in the absence of agnates, cognates other unrelated heirs succeed. They are the preceptors, acharyas, *shishyas* and *sahabrahmacharis* and pupils under the same tutor, are the heirs. According to the Departmental Bill, the respect for *acharya*, respect for *sahabrahmachari* and consideration for them is entirely thrown overboard. This again is a serious change. The cumulative weight of these serious changes as well as many numerous others will I hope succeed in ultimately winning over the Minister of Law to my side.

Then we come to clause 109 of the Departmental Bill and 108 of the final Bill. This provision is absolutely new. In that clause some new heirs have been introduced which were not in the original Bill.

With regard to succession to *stridham*, some changes have been made. And then in Part II, clause 14, where heirs stay together.....

Mr. Deputy Speaker: If the honourable Member is likely to conclude soon, we will stay on for a few minutes more.

Mr. Naziruddin Ahmad: No, Sir.

Shrimati G. Durgabai : We will stay on for five minutes more, if the honourable Member will conclude.

Mr. Deputy Speaker: I shall leave it to the speaker. The House now stands adjourned to 10-45 a.m. tomorrow.

The Assembly then adjourned till a Quarter to Eleven of the Clock Saturday the 2nd April, 1949.

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